

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

CITIZENS UTILITY BOARD,
CITIZENS ACTION/ILLINOIS and
AARP,

VS .

No. 08-0175

ILLINOIS ENERGY SAVINGS CORP.
d/b/a U.S. ENERGY SAVINGS
CORP.

Complaint pursuant to 220 ILCS)
5/19-110 or 19-115.)

Chicago, Illinois
October 16th, 2009

Met pursuant to notice at 10:00 a.m.

BEFORE :

MR. DAVID GILBERT, Administrative Law Judge.

APPEARANCES :

CITIZENS UTILITY BOARD
MS. JULIE SODERNA

309 West Washington Street, Suite 800
Chicago, Illinois 60606

Appearing for the Citizens Utility Board;

LOWIS & GELLEN

MR. MARTIN M. McMANAMAN

MR. KEVIN J. CLANCY

200 West Adams Street, Suite 1900

Chicago, Illinois 60606

for Illinois Energy Savings Corporation;

1 APPEARANCES (Cont'd):

2 MS. JENNIFER L. LIN
3 MS. NORA A. NAUGHTON
4 160 North LaSalle Street, Suite C-800
5 Chicago, Illinois 60601
6 for Illinois Commerce Commission.
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19 SULLIVAN REPORTING COMPANY, by
20 Barbara A. Perkovich, CSR
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1		<u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u>				
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
	A. Gendusa	781	786	811	815	805
3	B. McDaniel	819	822	884		880
	L. Jodlowska	889	891			900
4	J. Agnew	907	910	966		954

5

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7 E X H I B I T S

8	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
	CUB Exs. 2.0	786	786
9	2.1	786	786
	2.2	786	786
10	2.3	786	786
	5.0	786	786
11	9.0	786	786
	CUB Exs. 8.0	821	821
12	8.0C	821	821
	8.1	821	821
13	8.2	821	821
	8.3	821	821
14	Resp. Ex. 8	853	880
	Resp. Ex. 9	858	
15	Resp. Ex. 10	864	880
	CUB Exs. 3.0	888	888
16	6.0	888	888
	10.0	888	881
17	CUB 1.0	891	891
	1.1	891	891
18	Staff Exs. 1.0	909	909
	1.0C	909	909
19	2.0	909	909
	2.0C	909	909
20	2.1C	909	909
	Resp. Ex. 11	936	954

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1 MS. SODERNA: CUB calls Aimee Gendusa.

2 JUDGE GILBERT: Pursuant to the authority of the
3 Illinois Commerce Commission, I now call Docket
4 08-0175. If I could have appearances for the
5 record, please, beginning with the complainant.

6 MS. SODERNA: Appearing on behalf of the Citizens
7 Utility Board, Julie Soderna, 309 West Washington,
8 Suite 800, Chicago, Illinois 60606.

9 MS. NAUGHTON: Appearing on behalf of staff Nora
10 Naughton and Jennifer Lin, 160 North LaSalle, Suite
11 C-800, Chicago, Illinois 60601.

12 MR. McMANAMAN: And appearing on behalf of
13 respondent, Martin McManaman and Kevin Clancy,
14 Lowis and Gellen, 200 West Adams Street, Suite
15 1900, Chicago, Illinois 60606.

16 JUDGE GILBERT: We're here on a complaint by
17 Citizens Utility Board and AARP versus Illinois
18 Energy Savings Corp, doing business as, U.S. Energy
19 Savings Corp. We are in day three of our
20 evidentiary hearings. We have had several
21 witnesses already. Today the first witness is a
22 witness for the Citizens Utility Board. If I can

1 pronounce this correctly, Aimee Gendusa-English.

2 MS. GENDUSA-ENGLISH: Correct.

3 JUDGE GILBERT: Let me swear you in.

4 (Witness sworn.)

5 AIMEE GENDUSA-ENGLISH,

6 called as a witness herein, having been first duly

7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY

10 MS. SODERNA:

11 Q. Good morning, could you please state your

12 full name and spell it for the record.

13 A. Aimee Gendusa-English. And it's A-i-m-e-e,

14 G, as in George, e-n-d-u-s-a, hyphen, English,

15 E-n-g-l-i-s-h.

16 Q. And are you adopting the testimony of

17 Sandra Marsalen in this proceeding?

18 A. Yes.

19 Q. And that consists of the direct testimony

20 labeled CUB Exhibit -- corrected CUB Exhibit 2.0.

21 Rebuttal testimony, labeled CUB Exhibit 5.0?

22 A. Yes.

1 **Q.** And the surrebuttal labeled CUB
2 Exhibit 9.0?

3 **A.** Yes.

4 **Q.** And in addition, the you are adopting the
5 attachments to Ms. Marsalen's direct testimony
6 which is CUB Exhibit 2.1, 2.2, 2.3 and that's the
7 extent of the exhibits; is that right?

8 **A.** Yes.

9 **Q.** And can you explain your current position
10 at CUB?

11 **A.** I am currently the senior consumer rights
12 counselor and social service liaison.

13 **Q.** And what other positions have you held at
14 CUB?

15 **A.** Until recently, I was senior consumer
16 rights counselor without the added responsibilities
17 of social service liaison. And prior to that I was
18 consumer rights counselor, without being considered
19 senior.

20 **Q.** And how long have you been at CUB?

21 **A.** Since July 2004.

22 **Q.** Can you summarize your experience before

1 joining CUB?

2 **A.** Immediately before joining CUB, I worked at
3 the Community Economic Development Association of
4 Cook County as a coordinator in the low income home
5 energy assistance program. And prior to that I had
6 several other positions with non-profit
7 organizations doing various advocacy and liaison
8 type work.

9 **Q.** And do you have any changes or corrections
10 to Ms. Marsalen's testimony?

11 **A.** I do.

12 **Q.** And with regard to Ms. Marsalen's direct
13 testimony, could you point me to what has changed?

14 **A.** There is really only two changes. It would
15 be on -- in the direct testimony in Line 108 with
16 regards to the number of U.S. Energy complaints. I
17 would need to change that number to 446 for myself.

18 **Q.** And that was the number of complaints you
19 have personal knowledge of from the period of
20 January 1st, 2007, through the date this testimony
21 was filed on August 28th, 2008?

22 **A.** Yes.

1 **Q.** And what other changes are there?

2 **A.** That's the only one in the direct

3 testimony, right.

4 **Q.** Okay. And then rebuttal testimony?

5 **A.** In the rebuttal testimony she makes more

6 reference to specific numbers of complaints. So in

7 Line 68 and 69 I would have to say that I've had

8 5 years experience, instead of 9. And that she

9 says she's handled tens of thousands of complaints.

10 But since my -- for my entire tenure at CUB, I've

11 handled approximately 9,000 consumer complaints.

12 **Q.** And then are there any other changes to the

13 rebuttal testimony?

14 **A.** In Line 79, she's said she's handled over a

15 thousand U.S. Energy complaints and I, for my --

16 from my record I've handled a total of 875 U.S.

17 Energy complaints, through the date of the rebuttal

18 testimony.

19 **Q.** And with those changes -- are there any

20 other changes?

21 **A.** No.

22 **Q.** And with those changes and corrections to

1 your testimony, if I were to ask you the questions
2 set forth in the testimony today, would your
3 answers be the same?

4 A. Yes.

5 Q. And are those answers true and correct to
6 the best of your knowledge and belief?

7 A. Yes.

8 MS. SODERNA: And with that I would like to move
9 for the admission of CUB Exhibits 2.0, 2.1, 2.2,
10 2.3 -- I'm sorry, it's CUB Exhibit 2.0, the direct
11 testimony of Ms. Marsalen is actually corrected, it
12 was corrected the following day it was filed
13 originally, on August 29th. And CUB Exhibit 5.0
14 which is Ms. Marsalen's rebuttal testimony and CUB
15 Exhibit 9.0 which is Ms. Marsalen's and now
16 Ms. Gendusa-English's surrebuttal testimony.

17 JUDGE GILBERT: Are there any objections to the
18 admission of any or all of those exhibits?

19 MR. McMANAMAN: None, your Honor.

20 MS. LIN: None.

21 JUDGE GILBERT: CUB 2.0, 2.1, 2.2, 2.3, 5.0 and
22 9.0 are admitted.

1 (Whereupon, CUB Exhibits Nos.
2 2.0, 2.1, 2.2, .2.3, 5.0 and 9.0
3 were admitted into evidence
4 having been previously filed on
5 e-docket as of this date.)

6 THE COURT: Is there cross examination?

7 MR. McMANAMAN: Yes, there is, your Honor.

8 CROSS EXAMINATION

9 BY

10 MR. McMANAMAN:

11 Q. Good morning, Ms. English.

12 A. Morning.

13 Q. The first thing I wanted to do was direct
14 your attention to attachment No. 2 to the direct
15 testimony. Do you have that in front of you?

16 A. I don't believe I have the attachments,
17 actually, but if I recall it's a print screen from
18 our database.

19 MS. SODERNA: I don't think I have it, but if you
20 just show it to the witness and that might trigger
21 her memory.

22 MR. McMANAMAN: I have handwriting on my copy.

1 JUDGE GILBERT: This is what's labeled CUB
2 Exhibit 2.2.

3 MR. McMANAMAN: That's correct, your Honor.
4 Thank you.

5 BY MR. McMANAMAN:

6 Q. Were you able to take a look at that
7 document, Ms. English?

8 A. Yes.

9 Q. It's not a screen shot it's -- can you tell
10 us what it is for the record?

11 A. Exhibit 2.2 is the data entry guidelines
12 for the consumer advocacy database.

13 A. Okay, great.

14 Q. And the question that I have is on the
15 fourth page of that exhibit or relates to the
16 fourth page of that exhibit.

17 A. The information to obtain?

18 Q. No, it's the page right before that, is
19 that the third?

20 A. Probably the third page.

21 Q. Oh, you're right, I'm sorry. Do you see
22 where there is a field about a little bit more than

1 halfway down the page that says, dollars saved?

2 **A.** Yes.

3 **Q.** In the case of a customer who called CUB to
4 complain about U.S. Energy Savings Corp, would the
5 waiver of an exit fee be considered dollars saved?

6 **A.** My understanding would be, I think we would
7 count it as dollars saved if the fee had actually
8 been billed.

9 **Q.** But you wouldn't count it if it hadn't been
10 billed yet?

11 **A.** I don't think so, no. I wouldn't
12 personally.

13 **Q.** Is dollars saved logged for every consumer
14 complaint, if there are such dollars saved?

15 **A.** It's supposed to be, yes.

16 **Q.** And what is the purpose of that?

17 **A.** I believe that that field is so that we can
18 keep records for our board members and other
19 funders who might be interested in knowing a
20 general figure that we could say that we've saved
21 for the consumers that we've helped.

22 **Q.** So there are some people outside of CUB

1 that the information is provided to?

2 **A.** I honestly don't know.

3 **Q.** When you refer to funders, who are they?

4 **A.** I don't know. That field is not one that

5 we -- that I use very often.

6 **Q.** What do you understand a funder to be?

7 **A.** Well, we're funded by individual donors, so

8 we have to report to the public, we issue an annual

9 report.

10 **Q.** Okay, those are the only questions I have

11 on there. When a customer calls CUB to complain,

12 do you tell them whether their complaint is valid

13 or not?

14 **A.** I don't believe I ever use the word valid.

15 **Q.** When you're speaking with them on the

16 phone, do you give them any assurance of what the

17 outcome will be?

18 **A.** No.

19 **Q.** Do you tell them anything about what the

20 outcome will be?

21 **A.** No. As indicated in the data entry

22 guidelines and in the direct testimony, we

1 generally council people as to whether or not it
2 seems if a particular regulation has been violated,
3 but we say that we're going to file a complaint
4 with the Company, the Company will follow up with
5 you in X-amount of days and we don't really give
6 them any information about how it's going to turn
7 out.

8 Q. One of the things that -- well, let me ask
9 you this, what's the name of the group that you
10 work in?

11 A. The consumer advocacy department.

12 Q. Okay, consumer advocacy department. Is one
13 of the things that that department does is tracking
14 complaint trends?

15 A. We do.

16 Q. And did you do that for Just Energy in
17 2007? And let me just make clear, by Just Energy,
18 I mean the company that used to be called U.S.
19 Energy Savings Corp?

20 A. I didn't personally, but.

21 Q. But CUB as an organization did?

22 A. Yes.

1 **Q.** Or I should -- let me rephrase that. The
2 consumer advocacy department did, correct?

3 **A.** Yes.

4 **Q.** Do you know what trend, if any, the
5 department noticed in 2007?

6 **A.** I believe we noticed an increase in
7 complaints in 2007.

8 **Q.** Was that the only trend that was noticed?

9 **A.** That's the only one that I can think of
10 personally. Because Sandra is the one that would
11 be in charge of harvesting the data to identify
12 whether or not there was a trend.

13 **Q.** Right. But you're adopting her testimony
14 today, right?

15 **A.** Yes. And I do know that, from my
16 experience, I experienced an influx of calls during
17 that time period. We had meetings in which we
18 discussed the increased call volume regarding U.S.
19 Energy.

20 **Q.** When did you experience an influx of calls,
21 what month of that year?

22 **A.** I couldn't specify a month exactly.

1 **Q.** Do you remember what month you had the
2 meetings?

3 **A.** Throughout. We have department meetings, a
4 little bit less than monthly. So every several
5 weeks we have a meeting.

6 **Q.** Do you remember which meeting you talked
7 about Just Energy?

8 **A.** I don't recall. Usually, even now, we talk
9 about Just Energy, U.S. Energy, at almost all of
10 our department meetings.

11 **Q.** And was that the same in 2007?

12 **A.** Yes.

13 **Q.** Was there a red flag that went up in the
14 consumer advocacy department about -- with respect
15 to U.S. Energy Savings Corp in 2007?

16 **A.** I don't recall, because U.S. Energy, I
17 would have to be blunt and say that, U.S. Energy is
18 always a cause of red flags in our department.

19 **Q.** So there was no particular time over the
20 course of 2007 when the concern became elevated?

21 **A.** I do recall that there was an increase in
22 call volume during the time period, yes.

1 Q. But you can't recall at what point over the
2 course of the year?

3 A. No, not off the top of my head, but that's
4 why we have the database so we can measure that.

5 Q. And it was measured in 2007?

6 A. Well, we have the number -- the
7 testimony -- it's either the testimony or the
8 rebuttal contains the total number of complaints
9 that were logged during that time period.

10 Q. Right, but I'm just asking, your group was
11 measuring it over the course of 2007, right?

12 A. Yes.

13 Q. I wanted to direct your attention to the
14 rebuttal testimony on Page 3, if I could. And
15 specifically Line 60.

16 A. Okay.

17 Q. I guess actually the sentence there starts
18 on Line 58 and then runs through Line 60. Do you
19 see that?

20 A. Yes.

21 Q. And on Line 60 -- well, I guess, is it fair
22 to say that what you're saying there -- you're

1 comparing U.S. Energy Savings Corp's complaint
2 volume against the complaint volumes of other
3 alternative gas suppliers; is that right?

4 **A.** Combined, yes.

5 **Q.** Right. And so you say that all of the
6 other alternative gas suppliers combined had a
7 total of 800 complaints, right?

8 **A.** Yes. It says approximately 800.

9 **Q.** Okay, right, approximately 800. The 800 or
10 approximately 800 figure is the number of
11 complaints that were received by CUB, correct?

12 **A.** Yes.

13 **Q.** And it's not the total amount of complaints
14 that may have been received by other entities or
15 those alternative gas suppliers themselves, right?

16 **A.** No, these would be complaints that came
17 through our consumer hotline.

18 **Q.** When you're talking about the other
19 alternative gas suppliers, how many other ones are
20 there, at that time?

21 **A.** I don't know for sure. Right now I believe
22 there are 11 alternative gas suppliers total that

1 we track in our database.

2 Q. But do you know how many other alternative
3 gas suppliers made up the 800 figure?

4 A. No, not off the top of my head.

5 Q. Of the other alternative gas suppliers that
6 correlate to the 800 figure in Line 60, how many
7 new contracts did they have between January 1st,
8 2007 and September 30th, 2008?

9 A. I would have no way of knowing that.

10 Q. CUB doesn't track that, does it?

11 A. How many new -- how many -- are you asking
12 how many of these complaints involved new contracts
13 or how many new contracts the individual companies
14 had on their own?

15 Q. The second.

16 A. I would have no way of knowing that.

17 Q. Would you agree with me that not all of the
18 complaints that CUB receives about U.S. Energy
19 Savings Corp or Just Energy are agent related?

20 A. Yes, I would agree with that.

21 Q. And of the -- well, actually if you look a
22 little -- if you turn back to Page 2 of the

1 rebuttal testimony, towards the bottom of the page
2 at Line 53, do you see where it says USESC had a
3 total of 1900 complaints?

4 **A.** Um-hmm.

5 **Q.** Do you know how many of those 1900
6 complaints related to contracts that were signed on
7 or after January 1st, 2007?

8 **A.** I don't know that.

9 **Q.** And then, by extension, you don't know how
10 many of those complaints related to contracts that
11 were signed on or before January 1st, 2007, right?

12 **A.** No. I don't know that.

13 **Q.** When CUB receives a complaint from a
14 customer, the complaint can sometimes be referred
15 to another entity like the Commerce Commission or
16 the Attorney General's office, correct?

17 **A.** We refer -- we do refer consumers to those
18 agencies if we are unable to obtain a resolution
19 through our procedures.

20 **Q.** Okay. So when would that referral -- can
21 you explain for me when that referral would take
22 place with respect -- relative to the time that CUB

1 would receive, you know, the first communication
2 from a customer?

3 **A.** Well, speaking for our department only,
4 when we have an individual consumer, if they are
5 not satisfied with the resolution that we've been
6 able to obtain, we will tell them that they,
7 depending on the circumstances, they may have the
8 option of calling the Illinois Commerce Commission
9 or the Attorney General's consumer fraud hotline.
10 And with the Illinois Commerce Commission, we do
11 have a procedure where we can send the information
12 over to them on behalf of the customer. But we
13 consider that a referral.

14 **Q.** So those are referrals. Are there any
15 other places that referrals go, besides those two,
16 the Commerce Commission and the Attorney General's
17 office?

18 **A.** If it has to do with an issue that we don't
19 handle, we do have a long list of agencies we can
20 refer people to.

21 **Q.** And with respect to a company like U.S.
22 Energy Savings Corp, are there other places that a

1 referral might be directed?

2 **A.** Probably also the Better Business Bureau.

3 **Q.** Any other ones besides that?

4 **A.** No, not that I can think of.

5 **Q.** In situations where a referral is made, the

6 referral occurs after the point in time at which

7 CUB has forwarded the complaint to the Company,

8 correct?

9 **A.** You're speaking specifically with a U.S.

10 Energy complaint?

11 **A.** Yes.

12 **Q.** Yeah, I just want to make sure -- so I'm

13 just trying to understand the sequence of events.

14 So what would happen, and you tell me if I have

15 this right or wrong, is a customer contacts CUB,

16 CUB takes the information, would forward it to U.S.

17 Energy Savings Corp. If the customer is then

18 dissatisfied with whatever the Company's response

19 is or isn't, there may be further communication

20 with the consumer advocacy department and then a

21 referral could be made; is that right?

22 **A.** Yes.

1 **Q.** Would a referral ever be made before the
2 time that the initial consumer inquiry is referred
3 to U.S. Energy Savings Corp?

4 **A.** Before we submit the complaint to U.S.
5 Energy?

6 **Q.** Yes.

7 **A.** No. But I would like to elaborate on that
8 answer just a little bit. Because we do have --
9 because we have limited staff, we do have the
10 receptionist sometimes help people. If we are,
11 like if our department is closed or if we -- if
12 there is no counselor available, we will say you
13 will have to call back later or leave a message or
14 you can call the Illinois Commerce Commission or
15 the Attorney General's consumer fraud hotline. So
16 that would happen before that caller ever had a
17 chance to enter our database. So I don't think
18 that counts as a referral, as you're defining it.

19 **Q.** Okay, yeah, I wasn't trying to define it,
20 but I see what you mean. So in that situation,
21 there would be no communication that would go from
22 the consumer advocacy department to the Company?

1 **A.** Right.

2 **Q.** Okay, thank you. When a referral is made,
3 you know, to one of those other entities, like the
4 BBB, the Attorney General's office or the Commerce
5 Commission, is it your understanding that one --
6 that that respective agency, whichever one it is,
7 will then contact U.S. Energy Savings Corp about
8 the matter?

9 **A.** I think that would be my understanding, but
10 I can't really speak to what the procedures are at
11 other agencies, so.

12 **Q.** But it would be your expectation that they
13 are going to address the matter with the Company,
14 right?

15 **A.** Yes.

16 **Q.** Are you aware of any situations where a
17 referral has been made to one of those other
18 entities and then that particular entity has not
19 addressed the matter with U.S. Energy Savings Corp?

20 **A.** No, I'm not aware of that, any individual
21 instances of that.

22 **Q.** One other question I have for you is about

1 one of the changes that we made today. So on Page
2 3 of the rebuttal testimony, down towards the
3 bottom in Line 79.

4 A. Um-hmm.

5 Q. We had changed the number from a thousand,
6 because that was Sandra's number, to 875 for you,
7 correct?

8 A. Yes.

9 Q. And this is just a point of clarification,
10 because I think what you had said in the opening
11 was that you had personally handled 875 complaints
12 regarding U.S. Energy Savings Corp as of the date
13 of the rebuttal testimony?

14 A. Yes.

15 Q. But what I just wanted to point out to you
16 was that Sandra's statement was that she had
17 personal knowledge, not that she had particularly
18 handled.

19 A. Okay.

20 Q. That number. So does that, with that --
21 well, with that, can you explain to me if there is
22 any clarification needed?

1 **A.** Well, there may be some clarification
2 because when Sandra said personal knowledge of, on
3 occasion, as indicated in the procedures that are
4 in the direct testimony, some of the counselors may
5 discuss -- if there is a consumer that has an issue
6 that is relatively complicated, it may come to
7 either myself or Sandra. And so she may have been
8 taking into account some complaints that were
9 categorized under the name of a counselor in which
10 she became involved. So when I provided the
11 number, I was only looking at the number of
12 complaints that were specifically identified as
13 call taken by Aimee.

14 **Q.** Okay, I see. So she, because of her role
15 as the manager, she can have knowledge of consumer
16 complaints that she's not -- that she doesn't
17 consider herself as handling; is that right?

18 **A.** She may.

19 **Q.** But see, here's my question, is that in the
20 direct testimony one of the changes we made today
21 was that you had, I think, 400 -- you had
22 personally handled 446 complaints involving U.S.

1 Energy Savings Corp as of August 2008?

2 A. Um-hmm.

3 Q. And then --

4 MS. NAUGHTON: January 2007.

5 MR. McMANAMAN: But as of August 2008, that is
6 when that testimony was filed.

7 THE WITNESS: It was the period January 1st of
8 '07 through August 28th of '08.

9 BY MR. McMANAMAN:

10 Q. And then I just want to make sure I have
11 this right, is that the change we're making to Line
12 79, then, says that you personally handled 875 as
13 of November 2008?

14 A. Yes.

15 MS. SODERNA: I'm sorry, I think there is a
16 clarification there, though. Because this
17 testimony -- that Q and A does not prescribe the
18 same time period. So I don't want us to be
19 confused about what -- this testimony doesn't
20 relate to since January 1st, 2007, right?

21 MR. McMANAMAN: Oh, okay, that's all I was trying
22 to figure out.

1 BY MR. McMANAMAN:

2 Q. That's what I wanted to know is did you
3 handle another, roughly, 400 complaints between
4 August 2008 and November 2008?

5 A. No, because in the rebuttal testimony she's
6 saying of all time. So I ran the number of
7 complaints that were U.S. Energy taken by me with
8 the end date of November -- the end date that's on
9 the rebuttal testimony.

10 Q. I think I understand. And the start date
11 would be whatever your start date was with CUB?

12 A. Right.

13 MR. McMANAMAN: Okay, thank you. That's just
14 what I wanted to clarify. Those are the only
15 questions I have, your Honor.

16 JUDGE GILBERT: Okay. Does staff have any cross?

17 MS. LIN: No, Judge.

18 JUDGE GILBERT: I just have one line of inquiry,
19 I guess.

20

21

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1 EXAMINATION

2 BY

3 JUDGE GILBERT:

4 Q. You do personally take calls from
5 customers, you are actually on the telephone?

6 A. Yes.

7 Q. Do you regard your role as essentially that
8 of a tape recorder, in which you take in the
9 information, log it and either offer a next step or
10 not or do you have an interchange with the customer
11 or the complainant person?

12 A. Well, I would say a little bit of both.
13 But we generally try to write down -- we capture
14 the information that the consumer provides to us,
15 exactly how they say it. But then when we submit
16 the information to the Company, we're functioning
17 as an advocate with a goal of obtaining a
18 resolution that's favorable to the consumer.

19 Q. Okay. Right, well let's just stay with the
20 telephone conversation itself. Do you ask
21 questions typically? Do you probe the allegations
22 or assertions that the complaining person is

1 making?

2 **A.** We do ask questions, I do, because you have
3 to get all the information that you need to
4 properly submit the complaint. But a lot of the
5 complaints, if you look at the individual files,
6 they start off with the phrase consumer states or
7 client states. And in a lot of passages, we
8 actually put quotation marks around the phrases
9 that the consumer used.

10 So if you've got a -- sometimes you do
11 have to ask questions to get at the rest of the
12 information, so you would say, do you remember
13 approximately when the solicitor was at your house
14 or when is the first time that you noticed these
15 charges on your bill, something like that.

16 **Q.** Are there situations in which you feel that
17 the complaint being presented is frivolous,
18 irrational, perhaps contradictory on its face?

19 **A.** There can be, yes. So there are some
20 complaints in our database that were not sent to
21 the utility. If you've got someone who calls up
22 and specifically says that they signed up and

1 decided it was a bad idea, then we might not send
2 that.

3 Q. Okay. So you don't feel duty bound to take
4 every complaint and then send it on to the Company
5 or a third party?

6 A. Not necessarily. Also we do get -- we get
7 calls from people who are just asking for advice,
8 they say they want advice. So they may have been
9 solicited, with regard to U.S. Energy. A lot of
10 the complaints that we get or a certain number
11 would be people saying I just got a visit from
12 someone that was offering to lock me in at this
13 price. I didn't sign up, what do you think about
14 that?

15 In which case we would say well, the
16 price -- I would ask them for the price and tell
17 them what their utility PGA is at this time. And I
18 would refer them to our website for our gas market
19 monitor and things like that.

20 Q. Would a call like that be coded or treated
21 as a complaint call or some other kind of call?

22 A. It would be logged in the database as a

1 complaint. So we have -- again, in the testimony,
2 or one of the exhibits lists the different fields
3 that are in the database. So it wouldn't -- it
4 obviously wouldn't be be coded as a fraudulent
5 slamming type complaint, it might just be coded as
6 solicitation from gas supplier.

7 Q. If a customer, if I called, for example,
8 and I said to you, is this a good deal? I really
9 don't know what price to compare this to. And you
10 told me the PGA and you referred me to the gas
11 market monitor, why would you also consider that a
12 complaint since I didn't express to you any concern
13 other than, you, know I need advice?

14 A. We might not consider it a complaint, we
15 might consider it an inquiry.

16 Q. Can you code it differently in your records
17 as an inquiry?

18 A. Not necessarily. But we do have a field
19 that captures whether or not it was sent to the
20 utility or gas supplier. We also get calls from
21 people who specifically say, calls and e-mails and
22 letters, things that people submit on the website,

1 where they say they want to file a complaint about
2 something and the consumer themselves is calling it
3 a complaint, but they don't want us to take action
4 they just want us to log it in the database.

5 They want to report that they received a
6 visit from the solicitor and felt that it was a
7 high pressure sales pitch that was suspicious in
8 some way. So it wouldn't require action on our
9 part, other than logging it in the database.

10 **Q.** And might they say, specifically, I don't
11 want you to take action or they leave that up to
12 you or it could be either one?

13 **A.** It could go either way. Because it all
14 goes back to the fact that the complaint process is
15 more or less consumer driven. We are going on what
16 they're telling us.

17 **Q.** What if in contrast you feel a complaint is
18 particularly urgent, if the circumstances sounded
19 to you to be very urgent circumstances? I'm not
20 sure what that would be, just in your judgment you
21 feel like this requires immediate attention, how do
22 you treat -- do you code it differently and what do

1 you do with it?

2 **A.** We will flag a complaint as urgent when --
3 in the transmission to the utility when we submit
4 it. So, I mean, I can't think of very many
5 situations with the gas supplier that would be
6 considered urgent. Usually it has to do with
7 whether or not there is a service interruption on
8 the horizon.

9 I can think of situations where someone
10 had their bank account on auto debit and they had
11 received notice that a particularly large dollar
12 amount was going to be coming out of their bank
13 account. And so we might send that to the supplier
14 as urgent to see if we could help get some of those
15 charges adjusted before the huge dollar amount gets
16 deducted from their bank account automatically or
17 something like that. So if there is some kind of
18 time constraint, we would mark it urgent.

19 **Q.** Although it's treated in your database as
20 just another complaint, but the action you take
21 reflects the urgency of it?

22 **A.** Yeah.

1 JUDGE GILBERT: All right, I think that's all I
2 have.

3 MS. SODERNA: Can we just have one minute?

4 JUDGE GILBERT: Yeah, of course.

5 (Break taken.)

6 JUDGE GILBERT: Okay, we'll go back on the record
7 for redirect.

8 REDIRECT EXAMINATION

9 BY

10 MS. SODERNA:

11 Q. Ms. English, do you remember some questions
12 by Mr. McManaman regarding the trend of complaints
13 that the consumer advocacy department, whether they
14 pay attention to the trends, do you remember those
15 questions?

16 A. Yes.

17 Q. By trend, did you understand him to mean
18 purely the number of complaints?

19 A. Yes.

20 Q. Does CUB have a specific threshold with
21 regard to when the level of complaints would raise
22 a red flag?

1 **A.** No. Not a specific numeric threshold. We
2 would just be looking at when we're having -- when
3 we're experiencing an influx of complaints that
4 have -- like if they're particularly egregious or
5 serious or if there is a spike in a certain kind of
6 complaints where all the counselors are noticing a
7 particular thing. Would you like an example?

8 **Q.** Sure.

9 **A.** For example, one kind of complaint that we
10 get having to do with U.S. Energy customers, is for
11 a certain period of time we had -- we noticed a lot
12 of complaints coming in about discrepancies in the
13 supplier budget billing plan and people were
14 getting hit with large budget true ups on their
15 bill all of a sudden and not understanding. So
16 that would be something that would raise a,
17 quote/unquote, red flag for us. We would say,
18 what's going on.

19 **Q.** And what would you do if you noticed a
20 trend in the complaints, a red flag, what would you
21 do with that information?

22 **A.** The counselors would meet and discuss it

1 and generate examples and then refer it to the
2 director of consumer advocacy and possibly to other
3 CUB staff to see if more investigation was
4 warranted.

5 Q. And Mr. McManaman asked you about the kind
6 of complaints that CUB receives regarding sales
7 agent activities. Are there any other kind of
8 complaints that CUB receives regarding U.S. Energy?

9 A. Yeah, we get a wide variety of complaints
10 about U.S. Energy, they are not all having to do
11 with the sales agents. Another kind of complaint
12 that we get is people who have been assessed exit
13 fees when they didn't intend to actually exit the
14 program.

15 So a lot of these are low income
16 consumers, they may have fallen behind on their
17 utility bill. And because they are carrying a past
18 due balance the supplier cancels them out of the
19 Choices For You program and then they automatically
20 incur a cancellation penalty. And we have
21 definitely sent, I have personally sent complaints
22 to U.S. Energy in which the customer was saying

1 their goal was to get back on the plan so as to
2 avoid the cancellation penalty, because they didn't
3 intend to cancel.

4 Q. And in those situations, would you help the
5 customer with their desired result?

6 A. Yeah, because that's what the consumer was
7 asking us to advocate for on their behalf.

8 Q. And then you also were asked some questions
9 about referrals that CUB makes to other agencies.
10 Can you tell me how often CUB makes referrals to
11 other agencies, like the AG's office or the Better
12 Business Bureau or the ICC with regard to U.S.
13 Energy complaints?

14 A. Yes, I was kind of confused about what the
15 definition of a referral was. So for us a referral
16 is if we were unable to obtain a resolution for the
17 consumer and the consumer specifically asks for us
18 to assist them in taking it to a quote/unquote,
19 higher authority. So in certain circumstances, we
20 will, like I said, send the complaint file over to
21 the Illinois Commerce Commission, but that's, in
22 general, that happens.

1 But with the gas suppliers and U.S.
2 Energy that is not very common. Because most of
3 time the Commission tells people that they don't
4 handle supplier complaints. And then, you know,
5 with U.S. Energy, we usually reach a resolution
6 through our own complaint process. So it's hard to
7 generalize that question, because it happens on a
8 case-by-case basis. You might -- does that answer
9 the question?

10 Q. I think so.

11 MS. SODERNA: I think that's all I have.

12 JUDGE GILBERT: Is there any recross within the
13 scope of the redirect?

14 MR. McMANAMAN: I just have a couple questions,
15 your Honor.

16 RECROSS EXAMINATION

17 BY

18 MR. McMANAMAN:

19 Q. Ms. English, when you say that there is
20 situations or consumers that you are aware of who
21 call CUB and say they did not intend to cancel, is
22 it your understanding that in those situations the

1 company has initiated the cancellation?

2 **A.** Yes, they actually get a letter from the
3 utility, either from the utility or -- it's either
4 a letter or it appears on their bill and it says
5 dropped by supplier request.

6 **Q.** And that's because they are not paying
7 their bills?

8 **A.** Right.

9 **Q.** And then I know you said with respect to
10 the referral, now that we have the definition
11 correct, and I apologize for not doing that with
12 you earlier, I know you said it's not very common,
13 but out of the 875 or so complaints that you're
14 aware of, how many would you say, just as a rough
15 number?

16 **A.** For U.S. Energy?

17 **Q.** Yeah, how many of those resulted in a
18 referral?

19 **A.** Probably a fraction of a percentage, going
20 for my entire tenure at CUB, because up until
21 recently we were told that the Commission didn't
22 even handle supplier complaints.

1 **Q.** So when you say a fraction of a percentage,
2 you mean less than 1 percent of the 875?

3 **A.** Right. Off the top of my head I can't even
4 think of a U.S. Energy complaint that I have ever
5 sent to the Commission.

6 **Q.** Can you think of any that you have sent to
7 the U.S. Attorney General's office?

8 **A.** From our department we wouldn't refer a
9 consumer advocacy database file, we wouldn't send
10 it over to the Attorney General's office. So there
11 are instances where we would -- if we were unable
12 to obtain a satisfactory resolution, we would tell
13 the consumer you also have the right to call the
14 Attorney General's hotline.

15 **Q.** Do you know how many times that's happened
16 where the customer has then called the Attorney
17 General's hotline?

18 **A.** I would have no way of knowing how many
19 people would actually follow up on our suggestion.

20 **Q.** Do you know how many times you've made the
21 suggestion to a U.S. Energy Savings Corp customer?

22 **A.** I couldn't really tell you.

1 **Q.** Do you think it's more than 10 times?

2 **A.** Probably.

3 **Q.** Do you think that it's more than 50 times?

4 **A.** I'm not sure, I just don't know. It
5 depends on if it comes up in the conversation.

6 **Q.** I know you said you don't know a specific
7 number, but you said that you've personally handled
8 almost 900 complaints concerning U.S. energy
9 savings corp, correct?

10 **A.** Um-hmm.

11 **Q.** So do you have any recollection, and again,
12 just in rough numbers, any estimate as to how many
13 of those times you made a -- you referred or told
14 the customer that you have the right to go to the
15 Attorney General's office and gave them the hotline
16 number?

17 **A.** It would be a really low number, because
18 again, that number was through the date of the
19 rebuttal testimony. And it has to do with the
20 Attorney General's office, didn't file their -- we
21 started in recent months telling people to call the
22 AG's office more since they had their settlement.

1 But through the data that testimony was relatively
2 unusual. Because our goal is to resolve the
3 complaint on our own.

4 MR. McMANAMAN: Those are the only questions I
5 have, your Honor.

6 JUDGE GILBERT: Okay. Thank you very much for
7 your testimony, you are excused.

8 (Witness excused.)

9 MS. SODERNA: CUB calls Brian McDaniel.

10 (Witness sworn.)

11 BRYAN McDANIEL,
12 called as a witness herein, having been first duly
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY

16 MS. SODERNA:

17 Q. Good morning. Can you please state your
18 full name and spell it for the record.

19 A. Bryan McDaniel, B-r-y-a-n, M-c-D-a-n-i-e-l.

20 Q. And did you prepare written testimony for
21 this proceeding?

22 A. Yes, I did.

1 **Q.** And is that identified as the surrebuttal
2 testimony of Bryan McDaniel on behalf of the
3 Citizens Utility Board marked as CUB Exhibit 8.0?

4 **A.** Yes.

5 **Q.** And attached to your -- I'm sorry, you also
6 have a confidential version of the testimony that
7 is marked 8.0C. Is that your recollection?

8 **A.** Yes.

9 **Q.** And attached to your surrebuttal testimony
10 are three exhibits entitled CUB Exhibit 8.1, 8.2,
11 and 8.3, right?

12 **A.** Yep, yes.

13 **Q.** And I believe the confidential designation
14 has been removed from all three of these exhibits,
15 that's my records.

16 MR. McMANAMAN: That's correct.

17 BY MS SODERNA:

18 **Q.** And were these documents prepared by you or
19 under your supervision or direction for this
20 proceeding?

21 **A.** Yes.

22 **Q.** And do you have any changes or corrections

1 to your surrebuttal testimony?

2 A. No.

3 Q. And is this testimony true and accurate, to

4 the best of your knowledge and belief?

5 A. Yes.

6 MS. SODERNA: And with that I would request

7 admission of CUB Exhibit 8.0, 8.1, 8.2 and 8.3.

8 And CUB Exhibit 8.0C, which is the confidential

9 version of the testimony.

10 JUDGE GILBERT: Is there any objection to the

11 admission -- to any or all of those?

12 MR. CLANCY: No objection.

13 MS. LIN: None from staff.

14 JUDGE GILBERT: CUB 8.0, 8.0C, 8.1, 8.2 and 8.3

15 are admitted are admitted.

16 (Whereupon, CUB Exhibits

17 Nos. 8.0, 8.0C, 8.1, 8.2 and 8.3

18 were admitted into evidence as

19 of this date having been

20 previously submitted on

21 e-docket.)

22 JUDGE GILBERT: Is there cross examination?

1 CROSS EXAMINATION

2 BY

3 MR. CLANCY:

4 Q. Good morning, Mr. McDaniel, my name is
5 Kevin Clancy, I'm one of the attorneys for the
6 respondent in this case. Now, you are familiar
7 with the gas market monitor that CUB prepares,
8 correct?

9 A. Yes, I have a general knowledge of it.

10 Q. Do you have any involvement in actually
11 setting up that gas market monitor?

12 A. I sat through some meetings on it, but no,
13 doing the computer work, no.

14 Q. Do you know what different components are
15 taken into consideration in calculating and making
16 the calculations for that document?

17 A. Yeah. Usage, yes, I do.

18 Q. And what are those components?

19 A. Well, we get a usage average -- the usage
20 for an average customer from the Illinois Commerce
21 Commission, price per therm and any credits or
22 customer fees or hub surcharges are added. And we

1 get those directly from the utilities' tariffs. So
2 whatever is in the utilities' tariffs is in our gas
3 market monitor.

4 Q. So with respect to the alternative gas
5 suppliers, you list the contract price; is that
6 right?

7 A. Yes.

8 Q. Per therm?

9 A. Yes.

10 Q. And with respect to the -- for the
11 comparison purpose, you use the utility's charge
12 for whatever utility is in their area?

13 A. Yes, the PGA.

14 Q. And that also includes balancing charges?

15 A. I don't want to assume, I don't believe so
16 no. I just don't know.

17 Q. Do you know if it includes the
18 transportation service credit in the Nicor
19 territory?

20 A. If it's in their tariff, yes, it does.

21 Q. And the same for the hub credit for the
22 Peoples territory?

1 **A.** Yes, if it's in the tariff, yes, it does.

2 **Q.** Are those amounts that -- who sets those
3 amounts?

4 **A.** It's my understanding, those come through
5 the Illinois Commerce Commission. My understanding
6 of tariff filing is the utility files the tariffs
7 and they are either disputed or not disputed. And
8 if they are there is an order and from that order
9 that number is set.

10 **Q.** So the utility doesn't just say, on its
11 own, we're going to impose a balancing charge or
12 anything like that?

13 **A.** Not to my knowledge, no.

14 **Q.** Those are set by an outside entity, the
15 Illinois Commerce Commission?

16 **A.** A utility has a say in what it's going to
17 be and so do the suppliers, but yes.

18 **Q.** Do you know if the PGA that the contract
19 prices are compared to includes a volume balancing
20 adjustment?

21 **A.** I'm not familiar with the components of the
22 PGA, I just know of a PGA. I know that's the price

1 we use.

2 Q. So it's just the PGA?

3 A. Yes, sir, to my knowledge.

4 Q. But you do know that the PGA that's used
5 for the purposes of comparison does not include any
6 applicable taxes; is that right?

7 A. Yep.

8 Q. And why is that?

9 A. When you're comparing phone plans they
10 don't tell you what the taxes are going to be, they
11 tell you what the price of the plan is going to be.
12 When you go to a store, the price that's listed for
13 the item on the shelf tells you the price of the
14 item, it doesn't tell you the taxes. We never
15 purported to show taxes in that, it's not our
16 methodology, it's not something we include. They
17 vary from municipality to municipality.

18 Q. That's right. So if a customer is looking
19 at that and they are making a comparison, they are
20 looking at a contract price for a U.S. Energy
21 contract and it's being compared to the Nicor
22 utility rate, there may be additional charges

1 imposed only on a utility customer that aren't
2 reflected in that comparison?

3 A. By the municipality, yes.

4 Q. Right. But you don't include that in the
5 gas market monitor because the Company is not the
6 one imposing the tax; is that right?

7 A. Yes, sir.

8 Q. Okay. But the same is true for balancing
9 charges, transportation service credits and volume
10 adjustments right?

11 A. The Company has a say in those through a
12 docketed proceeding, but yes, fair enough.

13 Q. They are imposed outside?

14 A. Yeah.

15 Q. Do you know how many different
16 municipalities offer an offsetting tax credit for
17 alternative -- customers of alternative gas
18 suppliers?

19 A. I'm not aware, no.

20 Q. But you know it's some?

21 A. I would assume so. You guys say so.

22 Q. The -- all of the contracts that you

1 examined in the gas market monitor are for a
2 certain period of time; is that right?

3 A. Yes.

4 Q. From 1 year to 5 years?

5 A. Yes.

6 Q. When you're making a comparison between a
7 5-year contract and that particular contract is
8 currently in year two of its contract, what
9 calculations does the gas market monitor make to
10 account for the future period of time for that
11 contract?

12 A. I don't know.

13 Q. In fact, they don't make any, do they?

14 A. I don't know.

15 Q. But you think that the gas market monitor
16 is an extremely valuable tool for consumers; is
17 that right?

18 A. Yes.

19 Q. And that is because it gives them the
20 ability to look and see what other customers, what
21 savings or losses other customers have incurred in
22 the past; is that right?

1 **A.** No, it does not look at a customer level,
2 it looks at whether or not a contract has saved or
3 lost money, an offer, not a particular customer.

4 **Q.** Whether a particular offer?

5 **A.** Particular offer.

6 **Q.** And that is based on past performance?

7 **A.** Yes.

8 **Q.** Of that particular contract?

9 **A.** Yes.

10 **Q.** So you think that the past performance of
11 that particular contract is an important
12 consideration for a customer when they're making
13 their decision?

14 **A.** It's a piece of the information they need
15 to make a decision.

16 **Q.** It's a piece of the information that they
17 need, right?

18 **A.** That would be helpful.

19 **Q.** It would be helpful, okay. Do you think
20 that the alternative gas supplier should be
21 required to provide the kind of comparison that the
22 gas market monitor makes to customers they are

1 soliciting?

2 **A.** I wouldn't have any -- can you repeat the
3 question, please?

4 **Q.** Do you think that the alternative gas
5 suppliers should be required to make the kind of
6 comparison that the gas monitor makes when they are
7 soliciting perspective customers?

8 **A.** I don't believe they are currently required
9 to do so.

10 **Q.** Right. But in your role or the CUB's role
11 as a consumer advocacy group, CUB thinks it would
12 be beneficial if they had that information, right?

13 **A.** It would not harm consumers. It's much
14 like mutual funds have track records, how they've
15 done against other mutual funds, yeah, to the
16 extent that information is valuable to a customer
17 trying to make a decision, sure.

18 **Q.** If the gas market monitor showed that
19 80 percent or 90 percent of U.S. Energy's past
20 contracts had saved significant amounts of money,
21 do you still think that it would be valuable or
22 necessary for U.S. Energy to be disclosing that

1 information to perspective customers?

2 **A.** I'm sure they do that on their own, that
3 would be a selling point for them.

4 **Q.** But my question was do you think that's
5 valuable or necessary?

6 **A.** I think it would be helpful information to
7 the consumer, either way, either way, whether you
8 saved or you lost, knowing the track record would
9 be helpful.

10 **Q.** Do you think that past performance, actual
11 past performance, under earlier contracts, is an
12 indicator of what might happen in the future?

13 **A.** Nobody knows the future, but not
14 necessarily. A track record gives a consumer an
15 idea of the past, but no one knows the future.

16 **Q.** And in fact, you're right, we don't know
17 the future. You don't know if the price per therm
18 of natural gas is going to go up in the future?

19 **A.** Correct.

20 **Q.** Do you know, would you have any opinion as
21 to what the chances are that it would go up by more
22 than 25 cents per therm in the next 25 years?

1 **A.** I don't know.

2 **Q.** When the Commerce Commission approves a new
3 tariff for one of the utilities, how soon after
4 that is the rate change reflected in the gas market
5 monitor?

6 **A.** As soon as -- I don't know, but as soon as
7 the tariff is filed, we try to get that
8 information. That would be our goal.

9 **Q.** Okay, are you aware of other areas in the
10 CUB website and CUB publications where information
11 from the gas market monitor is used and
12 distributed?

13 **A.** No. I know we have a Choices For You and a
14 Customer Select summation of what Choices For You
15 is and what Customer Select is and in the interest
16 of trying to help consumers understand they have a
17 choice, if they so desire to make a choice. And
18 that's the only -- but I don't believe -- I don't
19 know, that's all I know about our Customer Select
20 and Choices For You.

21 **Q.** Are you aware that there is a CUB log, blog
22 on the CUB website?

1 **A.** Not currently there is not.

2 **Q.** Are you aware that there was?

3 **A.** There was.

4 **Q.** And are you aware that information

5 regarding the gas market monitor is distributed

6 through that?

7 **A.** It may have been, I did not -- at the time

8 I did not read the CUB blog every day.

9 **Q.** Prior to submitting your testimony did you

10 review any particular complaints regarding U.S.

11 Energy that the CUB received?

12 **A.** Some of -- prior to submitting my -- the

13 only complaints I would have reviewed. I didn't

14 review any complaints, no, to answer your question.

15 But for a year and a half I was on the phones, I

16 was a consumer rights counselor.

17 **Q.** You testified that it's clear from the

18 level and nature of the complaints that CUB, the

19 ICC and even the Company itself have received that

20 USESC sales agents are, in many cases, providing

21 inaccurate or misleading information to consumers?

22 JUDGE GILBERT: Mr. Clancy, where is that?

1 MR. CLANCY: On Page 2 of your surrebuttal
2 testimony Lines 28 through 30 -- I'm sorry, right,
3 surrebuttal, Lines 28 through 30.

4 BY MR. CLANCY:

5 Q. Is that correct?

6 A. Yes, that's what I wrote.

7 Q. Did you review any complaints that the
8 Company itself had received?

9 A. No.

10 Q. Did you review any complaints that the ICC
11 had received?

12 A. No. But I have general knowledge of having
13 received complaints.

14 Q. Did you have general knowledge of the level
15 of the complaints?

16 A. Yes.

17 Q. What is the example of some of the
18 misleading -- let me just strike that.

19 Is leading a customer to believe that
20 they might save money one of the examples of what
21 you characterize as misleading information?

22 A. Yes. Telling a consumer that they were

1 going to save money with U.S. Energy's product
2 would be misleading a customer.

3 Q. But my question was leading a customer to
4 believe that they might save money?

5 A. No, that's not. The problem we had was the
6 consumers were being told they were going to save
7 money.

8 Q. Okay, fair enough. Do you know when the
9 CUB blog was in effect, I'll say?

10 A. I don't know the exact dates, sir.

11 Q. So while you were at CUB, you were
12 receiving -- you were working as a counselor,
13 right, for a period of time?

14 A. Yes, sir.

15 Q. And you were receiving, in that role, you
16 were receiving complaints from customers about U.S.
17 Energy?

18 A. Yes.

19 Q. Are you aware that CUB actively solicited
20 complaints from customers?

21 A. If you -- what do you mean by -- I guess if
22 you could define actively solicited, in what way?

1 **Q.** Let me ask you to take a look at USESC
2 Exhibit 5.6, which you probably don't have in front
3 of you. So I'll apologize in advance, because it's
4 a lengthy exhibit and it's not individually --
5 there aren't individual page numbers, so some of
6 the times when I refer you to things you are going
7 to have to do a little fishing.

8 **A.** Okay.

9 **Q.** The first page I would like you to take a
10 look at is about 15 pages in and it's a document
11 dated Wednesday, April 26th, 2006.

12 **A.** If you could show it to me I would know if
13 we were on the same page. Okay, I believe we are
14 on the same page. It's some type of e-mail.

15 **Q.** Right. An e-mail from Jim Chilson.

16 **A.** Yes, sir.

17 **Q.** Were you working for CUB in April of 2006?

18 **A.** I believe so.

19 **Q.** Just take a look at the last sentence of
20 the first paragraph there that says, if you have
21 been a victim of U.S. Energy, call or e-mail CUB
22 and forward this message to your friends and

1 family. Were you aware that this was circulated
2 when you were working at CUB?

3 A. No.

4 Q. When you received complaints, did anybody
5 tell you that they were calling in response to this
6 request for victims of U.S. Energy to call or
7 e-mail CUB?

8 A. No. And if I could point out, this looks
9 like it is a consumer -- well, I don't actually
10 have anything more to say. No, I didn't know about
11 it.

12 Q. Do you think that the word victim implies
13 that U.S. Energy is committing criminal acts?

14 A. Not necessarily.

15 Q. Can you take a look, just a couple of pages
16 later, at an entry from the CUB log from
17 August 19th of 2008. It's also dated 9/4/2008,
18 which may be a printout date. It says CUB Guides
19 Give You Facts on Alternative Gas Suppliers.

20 A. Yes.

21 Q. And the first line of that is - well,
22 before I ask any questions, let me ask, who is Jim

1 Chilson?

2 A. The communications director at CUB.

3 Q. Do you report to him?

4 A. No, sir.

5 Q. Do you know who reports to him?

6 A. Patrick Dadin (phonetic).

7 Q. The first line of that says, Natural gas

8 prices are going through the roof. Did you believe

9 in August of 2008 that natural gas prices were

10 going through the roof?

11 A. Natural gas prices were high.

12 Q. They were high at the time?

13 A. That was last summer, correct?

14 Q. Right.

15 A. Yes.

16 Q. Did you believe they were going through the

17 roof?

18 A. I didn't know.

19 Q. Did you know that they were going up?

20 A. I knew they had gone up that summer.

21 Q. Do you think that it's misleading to say

22 that they are going through the roof?

1 **A.** They had been that summer.

2 **Q.** Okay, the second paragraph of that -- well
3 the first paragraph refers to a U.S. Energy offer,
4 an existing offer, and the contract price is a
5 dollar nine per therm. It then says that that rate
6 beat the utility rate the last few months as the
7 prices approach a dollar fifty. But the next
8 paragraph says it's a money loser again in Nicor's
9 territory because the regulated utility is charging
10 a dollar eight per therm. Do you see that?

11 **A.** Yeah, if you can give me a moment to just
12 read it.

13 **Q.** Sure.

14 **A.** Okay, I've read it.

15 **Q.** Do you know that there are municipalities
16 within the Nicor territory that charge taxes per
17 therm on utility customers, but alternative gas
18 suppliers don't pay that comparable charge?

19 **A.** Again, as I stated earlier, I don't know.
20 You guys say that it's so.

21 **Q.** Well, I'm sorry, but I don't want to
22 make -- I want to make everything as clear as

1 possible, but my understanding is that you
2 testified in your surrebuttal testimony that the
3 taxes are not reflected on the gas market monitor.

4 **A.** Yes, sir.

5 **Q.** That's right?

6 **A.** Yes, sir.

7 **Q.** You are just saying that in this particular
8 case you don't know if when Mr. Chilson says that
9 the utility is charging a dollar eight per therm,
10 you don't know if that includes the taxes either?

11 **A.** That's the PGA price.

12 **Q.** So if a customer reading this lives in a
13 municipality where he or she is subject to
14 additional taxes as a utility customer, compared to
15 a dollar nine per therm, this is not a money loser,
16 is it?

17 **A.** I would have to see the calculation, but
18 it's possible.

19 **Q.** Alternative gas suppliers, the contract
20 price they charge is not regulated; is that right?

21 **A.** Yes, sir.

22 **Q.** And there are currently 11 alternative gas

1 suppliers right now?

2 **A.** I don't know. That sounds correct, but I
3 don't know.

4 **Q.** Do you know if they are subject to any
5 regulations in the way they conduct their business?

6 **A.** Yes.

7 **Q.** What types of regulations are they subject
8 to?

9 MS. SODERNA: We've got to be careful not to get
10 into asking for a legal opinion here. I mean, he's
11 not a lawyer.

12 MR. CLANCY: That's fine.

13 BY MR. CLANCY:

14 **Q.** Let me ask you to turn two more pages
15 ahead. Before I ask you about this document
16 though, when you were taking calls as a counselor
17 for CUB, did you ever have any customers call you
18 and say a U.S. Energy representative came to me and
19 I signed the contract because they told me prices
20 were going through the roof and I should lock in at
21 this price?

22 **A.** Can you repeat that?

1 MR. CLANCY: Sure. Can you read it back?

2 (Whereupon, the record was

3 read as requested.)

4 THE WITNESS: I don't know, I don't remember if

5 people actually said those words or not.

6 BY MR. CLANCY:

7 Q. Do you remember if they said that U.S.

8 Energy told them prices were going up, so they

9 should lock in?

10 A. Again, I don't remember those exact words.

11 It seemed to be mostly people were just, they told

12 me I would save if I signed up.

13 Q. Let me ask you to take look at this next

14 one which says, the ICC does not endorse gas

15 marketers. Do you have that in front of you?

16 A. Yes, sir.

17 Q. And that, again, it's dated in the lower

18 right September 4th, 2008, but it also shows a date

19 on the line on the bottom of August 16th, 2007; is

20 that right?

21 A. Yeah. You are asking me what the dates

22 are?

1 **Q.** I'm just asking you if you are on the same
2 page?

3 **A.** Yes. Can you read the title to me?

4 **Q.** Sure. The ICC does not endorse gas
5 marketers.

6 **A.** We're on the same page.

7 **Q.** The first sentence there, after the dash
8 says, we hear stories all the time about marketing
9 ploys used by alternative gas suppliers, dash, the
10 companies that come to your door implying they can
11 save you money on your gas bills. Do you see that?

12 **A.** Yes.

13 **Q.** Were you aware in 2007 that this was posted
14 on the CUB website?

15 **A.** No, I did not read this specific blog, no.

16 **Q.** Around August 2007 or later, August,
17 September, October of 2007, do you recall generally
18 whether you received calls from customers saying
19 that they were told they could save money on my gas
20 bills by U.S. Energy?

21 **A.** What is the time period you're asking?
22 Because I was only on the phones for about a year

1 and a half when I started. And I've been in this
2 role for about two and a half years.

3 Q. Okay. Then I'll withdraw this question,
4 this would be after that time period. Okay, let's
5 go, I don't know if it was about ten or more pages
6 ahead further, the title is called U.S. Energy
7 Stories.

8 MS. SODERNA: Is that in part two?

9 MR. CLANCY: It's still in part one. The title
10 is U.S. energy Stories, February 11, 2008. It's
11 after Fuller Brush man.

12 MS. SODERNA: I don't see that.

13 THE WITNESS: I found it.

14 MS. SODERNA: I still don't see it.

15 BY MR. CLANCY:

16 Q. So you've got that in front of you,
17 Mr. McDaniel?

18 A. Yes, sir.

19 Q. And the second sentence says, if you have a
20 complaint about U.S. Energy or any gas company call
21 CUB's consumer hotline, right?

22 A. Yes.

1 Q. But it doesn't mention any other
2 alternative gas company by name, right?

3 A. No.

4 Q. I just want you to take a look at one more
5 in here. This one is in Part 2 or it may even be
6 Part 3 for those of you -- actually, you know what,
7 that's all the questions I have for this. Thank
8 you.

9 In your testimony, Mr. McDaniel, to move
10 on to another topic, you say at Line 79 that it is
11 fair to say that the utility price generally tracks
12 the market price for natural gas; is that right?

13 A. Yes.

14 Q. And by market price, are you referring to
15 the market spot price, the spot market price?

16 A. Yeah, the 9 megas market price.

17 Q. And why is it that the utility price in
18 Illinois generally tracks the 9 meg spot price?

19 A. I don't know exactly why.

20 Q. Do you know if it's because the Illinois
21 utilities portfolio is heavily weighted towards
22 short-term gas supply?

1 **A.** I don't know the makeup of the Illinois
2 utilities portfolios, their percentages. But,
3 again, that's not always true. This past winter
4 that wasn't true, necessarily, but sometimes it
5 does.

6 **Q.** You mention on, I believe it's Page 5 of
7 your testimony, yes, Page 5, starting on Line 118,
8 that way that the utility, as I understand it, the
9 way that the utility acquires its natural gas
10 supply is fairly complicated; is that right?

11 **A.** Yes.

12 **Q.** And they have sophisticated procurement
13 strategies and experienced professionals deal with
14 it, right?

15 **A.** Yes.

16 **Q.** And that is why you conclude that the --
17 that it's difficult for a consumer to evaluate
18 whether a fixed price contract being offered is a
19 good deal, relative to the utility price, right?

20 **A.** I guess if you could repeat your question,
21 I wasn't following you there.

22 **Q.** Well, let me ask you -- take a look at Line

1 130 to Line 133.

2 **A.** Okay.

3 **Q.** You say there is simply no reasonable
4 comparison between the utilities energy procurement
5 practices, which are reviewed by regulators and
6 subject to standards under state law and consumers
7 being sold a 4 to 5-year fixed product at their
8 door.

9 Are you saying there that it's difficult
10 for the consumer to evaluate whether the fixed
11 price contract is a good deal because the way that
12 utilities' rate is -- the way that the utility
13 supply is managed is very complex and difficult to
14 understand?

15 **A.** That's partly why it's difficult for them
16 to evaluate the product.

17 **Q.** What are the other reasons?

18 **A.** Lack of awareness what their -- what the
19 PGA price is they are currently paying the utility
20 or have paid. Not having a shot of the futures
21 markets in their hand at the time someone is asking
22 them to look 4, 5 years out and sign a fixed price

1 contract for the next 4 or 5 years, not having any
2 idea what the futures price is makes it difficult.
3 Someone telling them something different than what
4 is written on the contract makes it difficult.

5 Q. Okay. Other than the last one, all of
6 those reasons you mentioned are true of when
7 comparing all fixed price contracts to the utility
8 isn't that right?

9 A. Yes. But the -- yes.

10 Q. You include some testimony and some
11 exhibits here about where CUB -- I'm sorry, where
12 U.S. Energy markets its products, right?

13 A. Yes, sir.

14 Q. The analysis that you prepared is only with
15 respect to Zip codes within the City of Chicago,
16 right?

17 A. Yes. And there is a reason for that, as I
18 stated in my testimony.

19 Q. Right. And that's -- and I want to ask you
20 about that. Because the reason you stated is on
21 Line 156 to 157, some suburban areas or towns have
22 multiple Zip codes. Since it is not possible to

1 discern which Zip codes in Aurora were targeted by
2 USESC from the e-mails, I have chosen to focus
3 solely on Chicago as the data set is more complete,
4 right?

5 **A.** Yes, sir, that's what I wrote.

6 **Q.** The e-mails you are talking about are the
7 e-mails that were designated as CUB 4.05 and 4.06,
8 right?

9 **A.** I don't know their designation.

10 **Q.** It's in the testimony on Line 138.

11 **A.** Oh, sorry, yep.

12 **Q.** Just for the record, those e-mails were
13 previously marked --

14 MR. CLANCY: Julie, did you mark these as a CUB
15 cross exhibit, do you remember what number it was?

16 MS. SODERNA: CUB Cross Exhibit 1.

17 BY MR. CLANCY:

18 **Q.** Previously marked as CUB Cross Exhibit 1.
19 Could I ask you to take a look at that, do you have
20 a copy of that? Let me just ask you to take a look
21 at the second page there, USE 33015.

22 **A.** Okay.

1 **Q.** That's where there is a list of wards with
2 corresponding Zip codes, those are city Zip codes
3 and then it begins a list of some cities, right?

4 **A.** Yes, sir.

5 **Q.** Now, this is what you're basing your
6 statement on that U.S. Energy is targeting certain
7 areas, right?

8 **A.** Yes.

9 **Q.** So when it lists Aurora, there is no Zip
10 code listed, right?

11 **A.** Right.

12 **Q.** So the issue is not that you're not able to
13 determine which Zip code in Aurora is being
14 targeted, the issue is that there is no Zip code in
15 Aurora being targeted, right, it just says Aurora?

16 **A.** In later e-mails there are Zip codes next
17 to Aurora, but on that particular one it wasn't,
18 and so that's why -- that's why I didn't know so I
19 didn't include it. For instance, it's 33105,
20 Aurora has a Zip code next to it.

21 **Q.** Are there any others where a City has a Zip
22 code listed?

1 **A.** Well, that's a continuation of 33105.

2 **Q.** Let me just shortcut this. For the dates

3 of November 27th, 2008 through we're going, and

4 these dates go backwards.

5 MS. SODERNA: I don't believe they are

6 necessarily in date order, this is how they were

7 served.

8 MR. CLANCY: You're right, it's not in date

9 order. So it is what it is.

10 BY MR. CLANCY:

11 **Q.** There are a number of these where there is

12 no Zip code listed for Aurora and no Zip code

13 listed for any of the cities, right?

14 **A.** Yes.

15 **Q.** On most of these -- would you agree that on

16 most of these there are more City names than there

17 are Chicago Zip codes listed?

18 **A.** I would have to look through all of them

19 again to agree with you. I don't know if that's

20 true or not. I looked at the date -- I looked at

21 the entire -- I thought I could do the best

22 analysis by looking at all the e-mails. And by

1 looking at all the e-mails, not all of them had zip
2 codes next to the City.

3 Q. Do you know what the -- well, let me go
4 back. Your conclusion from all of this is that
5 U.S. Energy is targeting low income and minority
6 communities, right?

7 A. Yes, sir.

8 Q. Do you know what the median income is for
9 the City of Chicago?

10 A. No.

11 Q. Would you accept, subject to check, that,
12 according to the 2000 census, it was \$38,625?

13 A. 38,625 you say?

14 Q. Yeah.

15 MR. CLANCY: Would you like me to introduce
16 exhibits for all of this?

17 THE WITNESS: I can accept it subject to check.

18 MS. SODERNA: If he accepts it subject to check,
19 I think that's good enough for purposes of
20 discussion.

21 BY MR. CLANCY:

22 Q. 38,625.

1 **A.** And that's the median household income?

2 **Q.** Median household income.

3 **A.** Okay.

4 **Q.** The remainder of all of the cities listed

5 on CUB Cross 1 are all in the Cook County and the

6 surrounding counties; is that right?

7 **A.** Yeah, I would assume so, yes, because you

8 only market in Nicor and Peoples and North Shore

9 territory.

10 **Q.** Do you know what the median income -- with,

11 I'm sorry, would you agree, subject to check, that

12 the median income per household for -- I apologize,

13 here my data is also from the U.S. Census Bureau,

14 but for the counties, it's updated. So the median

15 household income as of 2007 is 52,554?

16 **A.** For what?

17 **Q.** For the median household income for Cook

18 County as a whole?

19 MS. SODERNA: Does that include the City?

20 MR. CLANCY: That includes the City.

21 BY MR. CLANCY:

22 **Q.** Would you agree with me that the median

1 income for the City is lower than it is for the
2 County as a whole?

3 A. I don't know.

4 Q. Let me just ask you, I'll just get this in
5 the record, let me just show you what I'll have
6 marked as Respondent's Cross Exhibit 8.

7 (Whereupon, Respondent's
8 Cross Exhibit No. 8 was
9 marked for identification
10 as of this date.)

11 BY MR. CLANCY:

12 Q. I'll just represent that these are
13 statistics from the U.S. Census Bureau regarding
14 Cook County and surrounding counties. Do you see
15 on the first page where the median household income
16 for Cook County is listed as 52,554?

17 A. Yes.

18 Q. Turn two pages to DuPage County.

19 A. Okay.

20 Q. Actually, why don't you just take a look at
21 the median household income for the remaining
22 counties, DuPage, Lake, Will County, Kane County

1 and McHenry County.

2 **A.** I see them.

3 **Q.** So would you agree that the median
4 household income is sizably larger in all of the
5 other counties than it is in Cook County?

6 **A.** It's larger.

7 **Q.** And the median income in Cook County itself
8 is larger than it is for just the City of Chicago?

9 **A.** Yes. Well, that median -- you gave me a
10 2000 number for the median of Chicago and now you
11 are asking about updated numbers. So I guess I
12 would have to see an updated number for Chicago in
13 order to answer that question.

14 **Q.** Right. But, for example, the median
15 household income in Lake County is 77,904 in 2007?

16 **A.** Yes.

17 **Q.** So unless the City of Chicago's median
18 household income doubled in the last 7 years, Lake
19 County has still got a higher median income, right?

20 **A.** Unless it doubled, correct.

21 **Q.** Can you turn to your exhibit -- your
22 attachment, I apologize, Exhibit 8.3 to your

1 testimony.

2 **A.** Yes.

3 **Q.** You list here the 10 poorest Zip codes in
4 Chicago and the 10 richest Zip codes in Chicago,
5 right?

6 **A.** Yes.

7 **Q.** And you list the number of marketing
8 efforts?

9 **A.** Yes, sir.

10 **Q.** And those are from the e-mails we just
11 talked about?

12 **A.** Yes, sir.

13 **Q.** And you draw the conclusion from this that
14 because there are a limited number of marketing
15 efforts in the 10 richest Zip codes, that's one of
16 the factors that you use to conclude that U.S.
17 Energy is targeting poor Zip codes, right?

18 **A.** That and the fact that Gord Potter's map
19 did not show a single contract signed in the 10
20 highest income Zip codes.

21 **Q.** That's right, it doesn't.

22 **A.** So both of those thing.

1 Q. Let me just ask you about some of these Zip
2 codes here. Do you know where Zip code 60606 is?
3 A. It's around here.
4 Q. Right, it's in the loop.
5 A. Um-hmm.
6 Q. Are you aware or would you agree, subject
7 to check, that it is an area of 4 blocks by
8 4 blocks?
9 A. Subject to check.
10 Q. Would you agree, subject to check, that the
11 population of 60606 is 1600 people?
12 A. Subject to check.
13 Q. Would you agree that by comparison, 60614
14 has a population of 65,000 people?
15 A. Sure, subject to check.
16 JUDGE GILBERT: Just for clarification, when you
17 say has, you are implying present tense?
18 MR. CLANCY: Present tense, right. And I won't
19 hold anybody to exact numbers if I'm off by a
20 little bit.
21 MS. SODERNA: And the data you are using, where
22 is that coming from?

1 MR. CLANCY: It's not very glamorous, but it's
2 very comprehensive. It's called Zip Skinny. And
3 it is a compilation of Census Bureau data that is
4 just compiled to a format where you can access it
5 Zip code by Zip code and compare Zip codes among
6 themselves.

7 MS. NAUGHTON: What year is the census data?

8 MR. CLANCY: It would be the 2000.

9 BY MR. CLANCY:

10 **Q.** What about 60601, that is also in the loop,
11 right?

12 **A.** I believe so.

13 JUDGE GILBERT: That's where we are now.

14 THE WITNESS: Okay, then it is in the loop.

15 BY MR. CLANCY:

16 **Q.** Are you surprised that U.S. Energy hasn't
17 come to this building soliciting natural gas
18 contracts?

19 **A.** No, but there are residential buildings
20 around here they could.

21 **Q.** Right. Are you aware that they are almost
22 entirely high rises?

1 **A.** More than likely, yeah.

2 **Q.** Do you think that most of those high rises
3 have doormen?

4 **A.** They may.

5 **Q.** Let me ask you about Zip code 60614. Are
6 you aware that there are certain Zip codes that
7 U.S. Energy has been instructed by alderman -- not
8 Zip codes, I apologize, certain wards within the
9 City that U.S. Energy has been instructed by
10 alderman not to solicit in?

11 **A.** I am not aware.

12 **Q.** Let me ask you to take a look at a document
13 that was produced in this case. I'm marking it as
14 Respondent's cross Exhibit No. 9.

15 (Whereupon, Respondent's
16 Cross Exhibit No. 9 was
17 marked for identification
18 as of this date.)

19 BY MR. CLANCY:

20 **Q.** And this was produced to CUB, it's entitled
21 Municipals, which I believe is meant to be
22 municipalities, That Cannot be Worked. And it

1 lists, in Chicago, the 19th, 21st, 31st -- 19, 21,
2 33 -- I'm starting it again. 19, 21, 31, 33, 43,
3 44 and 47, right?

4 A. Yes, sir.

5 Q. Do you know that 60614 is in the 43rd ward?

6 A. No.

7 Q. Do you know that 60657 is in the 44th ward?

8 A. No.

9 Q. Do you know that 60631 is in the 41st ward?

10 I'm sorry, 41st isn't listed there, I'll take that
11 back.

12 Q. What about 60655, do you know that that is
13 in the 19th ward?

14 A. No.

15 MS. SODERNA: I think we've established that he
16 doesn't know where these areas are. I think we can
17 move on.

18 BY MR. CLANCY:

19 Q. Would it have affected your analysis or
20 your conclusion that U.S. Energy is targeting
21 certain Zip codes when these -- the Zip codes in
22 your second chart, some of those are areas where

1 U.S. Energy representatives are prohibited from
2 going?

3 **A.** Yeah. It would have allowed me to exclude
4 those and move down the list of incomes, so how
5 many are you saying would have been kicked out?
6 Because I know of the top graph, five of the most
7 targeted Zip codes are also 5 of the 10 poorest Zip
8 codes.

9 **Q.** Okay, we'll get to that in a second.

10 **A.** Okay.

11 **Q.** But you would agree that if U.S. Energy is
12 not allowed to market in certain of these Zip
13 codes, that would affect your conclusion.

14 MS. SODERNA: I don't know that we've established
15 that he knows, other than the existence of this
16 exhibit, that U.S. Energy is not allowed to market.
17 This exhibit is labeled Municipals That Cannot be
18 Worked. It doesn't indicate why that is.

19 MR. CLANCY: But my question was whether that
20 would affect his -- my question was whether that
21 would just affect his conclusion.

22 MS. SODERNA: I'm sorry, say it again.

1 MR. CLANCY: My question was whether that would
2 affect his conclusion.

3 MS. SODERNA: Maybe you can just establish the
4 foundation that he knows what this document means.

5 BY MR. CLANCY:

6 Q. You prepared this list of the 10 richest
7 Zip codes, right?

8 A. Correct.

9 Q. If some of these Zip codes were areas that
10 U.S. Energy was prohibited from soliciting, would
11 that affect your analysis?

12 A. Possibly.

13 JUDGE GILBERT: Let me interject here, because
14 this is probably timely. And actually prior to the
15 comments from Ms. Soderna, I already had some
16 concerns about this exhibit. And I don't know if
17 my concerns invalidate, at least for the most part,
18 the cross examination you just conducted, insofar
19 as the principles are concerned.

20 The principle that Exhibit 8.3 and the
21 testimony associated with that, possibly would have
22 been altered had the witness known that certain

1 areas were off limits to marking efforts by U.S.
2 energy. That principle, I think, remains intact.
3 But this piece of paper, as a fact, I don't believe
4 it is -- I mean, I don't know how you could offer
5 more of a foundation, because he's not your
6 witness. And so I think, even without a motion, I
7 still need to protect my record and I don't know
8 what cannot be worked necessarily means. I don't
9 know why they cannot be worked, I don't know who
10 prepared this list.

11 Nothing on here ties it to, for example,
12 aldermanic prohibitions. I don't actually know how
13 an alderman can prohibit someone from marketing in
14 a Zip code, but I guess that's a different issue.
15 And so, again, even absent a motion I have some
16 concerns about this particular document. Though I
17 don't know that my concerns, as I said, for the
18 reasons I explain, invalidate the principle you
19 were trying to develop.

20 MR. CLANCY: I tell you what, why don't I move
21 on, because I've got some other questions about
22 something else that the witness also mentioned, so

1 it's a good transition.

2 BY MR. CLANCY:

3 Q. Preparing your analysis, you used data that
4 was provided to you from the discovery responses in
5 this case, right?

6 A. Just -- right, just the e-mails, yes, but
7 the data, median household income, ethnic
8 composition, race composition, I took that from the
9 2000 census as a noted in my testimony.

10 Q. But you also reviewed, as I believe you
11 said, you reviewed information from where within
12 the City U.S. Energy is getting certain volume of
13 its contracts?

14 A. Gord Potter's, yes, whatever that exhibit
15 is in Gord Potter's testimony.

16 Q. And did you also review the underlying data
17 that went with that?

18 A. Yes, I looked at it.

19 Q. Let me ask you to take a look then as what
20 I'll mark as Respondent's Exhibit 10, Respondent's
21 Cross Exhibit 10.

22

1 (Whereupon, Respondent's
2 Cross Exhibit No. 10 was
3 marked for identification
4 as of this date.)

5 BY MR. CLANCY:

6 Q. The data that was produced, underlying,
7 that was produced in an electronic format. But
8 here we're limited to a paper format I'm going to
9 hand to you. But do you recognize this data to be
10 the percentage of contracts in certain City Zip
11 codes and a list of the population, the income per
12 household and the average house value?

13 A. Yes, I recognize this data as that. Go
14 ahead.

15 Q. This is the information that you used to
16 form, in part, the conclusions that you form in
17 your testimony?

18 A. No, this is information I only reviewed as
19 preparation for this trial, not before I did my
20 analysis. This was information that was provided
21 to us when we asked for work papers through
22 discovery, so I don't know if that occurred before

1 or after my testimony, but I know I only looked at
2 it in preparation for today.

3 Q. In looking at Mr. Potter's exhibit -- I'm
4 sorry, you reached the conclusion, didn't you, that
5 a disproportionate number of contracts were
6 obtained from low income Zip codes in the City,
7 right?

8 A. Yes.

9 Q. And based on that, you reached the
10 conclusion --

11 A. No, I -- excuse me, I reached the
12 conclusion that those lower incomes were targeted,
13 not contracts obtained. My analysis is simply
14 going from the e-mails. The e-mails have nothing
15 to do with the number of contracts signed. The
16 e-mails are only showing where U.S. Energy was
17 sending -- whoever that was sending the e-mails,
18 planned to market.

19 Q. But didn't you just say a moment ago that
20 most of the contracts that U.S. Energy obtained
21 were in lower income Zip codes?

22 A. From looking at Gord Potter's -- if I did,

1 I did not mean to say that. What I meant to say --
2 were we talking about the analysis at the time or
3 are we talking about Gord Potter's graph?

4 Q. I was talking about your impressions of
5 Gord Potter's graph.

6 A. No, the only thing I remember -- I think I
7 brought up Gord Potter's graph. I said none of the
8 10 richest Zip codes appear on Gord Potter's graph
9 and you said, we'll get to that later.

10 Q. Do you remember how many of the -- in your
11 testimony on Lines 193 and 194, what do you mean by
12 regardless, Mr. Potter's attempts to explain away
13 CUB's analysis should be rejected?

14 A. There, if you look above that at Line 190,
15 no, excuse me, let me read this. I assume his
16 attempts to -- his attempts to explain where
17 contracts were signed, I believe, is what I was
18 referring to there. Because I believe that is what
19 he's trying to show, he states that CUB has accused
20 us of targeting low income consumers in the past
21 and I believe that's coming directly from his
22 testimony, that line there. So I am responding to

1 that.

2 **Q.** And you think it should be rejected because

3 of the e-mails we've talked about?

4 **A.** That's right.

5 MS. SODERNA: Can we backup so that we're certain

6 and look at the reference to his testimony.

7 MR. CLANCY: Or are you referring to

8 Mr. Nicholson?

9 MS. SODERNA: Let's direct -- because I think

10 we're talking about different, can you point me to

11 the testimony that you are referring to again?

12 MR. CLANCY: Lines 193 and 194.

13 MS. SODERNA: Can you review that whole question

14 and answer?

15 THE WITNESS: Yeah.

16 MS. SODERNA: And I think there was a question

17 pending.

18 BY MR. CLANCY:

19 **Q.** In this answer, are you referring to

20 Mr. Potter's attempts to explain or

21 Mr. Nicholson's?

22 **A.** I believe, even though I start the

1 paragraph, I talk about Mr. Nicholson, I believe
2 I'm talking about Mr. Potter's, because I remember
3 in Mr. Potter's testimony, he states CUB has
4 accused us of targeting low income consumers in the
5 past. So I had this chart prepared under my
6 direction that shows contracts signed. And I say,
7 contracts signed is not what we're talking about,
8 we are talking about where U.S. Energy sent people
9 to market.

10 Q. But you did look at his chart, you looked
11 at the Zip codes and the income of the Zip code
12 relative to the percentage of contracts signed,
13 right?

14 A. Once I had the work papers, yes.

15 Q. And what do you mean by work papers?

16 A. This exhibit that you handed me, that I
17 said I hadn't seen and I looked at to prepare for
18 this.

19 Q. After you had all of that, then you looked
20 at it?

21 A. Yes -- I would look at the underlying
22 numbers for his graph once I saw his work papers,

1 which is not until recently. Which was after I
2 prepared my analysis.

3 **Q.** Is your conclusion still, today, that
4 Mr. Potter's attempts to explain away CUB's
5 analysis should be rejected?

6 **A.** Yes.

7 **Q.** Let me just ask you about Lines 161 to 166
8 of your testimony. And there you talk about 13 Zip
9 codes that you concluded are targeted more than 30
10 times, more than any other Zip codes in Chicago,
11 right?

12 **A.** Yes, sir.

13 **Q.** Nine of them are majority African
14 Americans, have a majority of African Americans
15 living in them, two have a Hispanic majority and
16 two are what you call diverse?

17 **A.** Yes, sir.

18 **Q.** What is the conclusion that you draw from
19 the fact that nine of these Zip codes have a
20 majority of African Americans living within them?

21 **A.** The only conclusion I draw is that's where
22 people are marketing. I make no other conclusion.

1 **Q.** Why is that included in your testimony?

2 **A.** Because I did an analysis of racial and
3 ethnic composition of the neighborhood where they
4 are targeting the most, where they are selling the
5 product the most, that's why it's included.

6 **Q.** Are you trying to suggest, I don't want to
7 tell you what you are or aren't suggesting, but
8 does this have anything -- is this at all
9 relevant -- I guess I would just like you to
10 explain, if you can, why this is relevant.

11 **A.** Well, because you can look at it from the
12 other side. The Zip codes where they had more than
13 30 dispatches were not majority wide areas. And if
14 they would have been, I would have written that
15 they were, but they weren't. And so the numbers
16 shook out that way and that's what the numbers
17 showed.

18 **Q.** I don't want to be, you know, belaboring
19 this, but I don't think that you've answered my
20 question as I know that it is here in your
21 testimony. What I want I'm trying to find out is,
22 why it's here, what relevance does it have to the

1 conclusions that you have drawn?

2 **A.** The conclusion I drew was they target low
3 income minority communities, those are minorities
4 within this country. They do not constitute a
5 majority of the country, they are minorities,
6 that's all my conclusion was.

7 **Q.** Low income minority communities or low
8 income communities? Which is targeted? Because
9 your analysis on Exhibit 8.3 doesn't mention
10 anything about race, it shows only income.

11 **A.** That's correct. It shows only income.

12 **Q.** How is a low income minority community
13 different from a low income community?

14 **A.** I think the struggle of minority
15 communities has been well documented throughout the
16 history of this country.

17 **Q.** If a community is economically
18 disadvantaged, wouldn't that be reflected in the
19 median income figure itself?

20 **A.** Yes.

21 **Q.** What does the racial composition add to the
22 analysis of the economic disadvantage, if that

1 disadvantage is already reflected in the income
2 statistics?

3 **A.** It was a point of interest.

4 **Q.** Do you know where the majority of U.S.
5 Energy contractors in the City of Chicago live?

6 **A.** I have seen a map, I believe the one you
7 have in your hand, yes.

8 MR. CLANCY: Let me mark this as Respondent's
9 Cross Exhibit 11.

10 MR. CLANCY:.

11 **Q.** Let me ask you to take a look at what I've
12 just handed you, which is a copy of what's
13 previously been marked as Respondent's Exhibit 4.3
14 in this hearing,

15 JUDGE GILBERT: I'll just say for the record,
16 both marked and admitted as 4.3.

17 MR. CLANCY: Both marked and admitted, thank you.

18 BY MR. CLANCY:

19 **Q.** Does this look familiar to you?

20 **A.** Yes.

21 **Q.** Can you tell me what it is or what you
22 believe it to be?

1 **A.** You said it was -- I assume it may have
2 something to do with where contractors lived.
3 That's how you started this is are you aware of
4 where contractors live and you gave me this map. I
5 guess I'm confused by ICS in the title of the map.

6 **Q.** That stands for independent contractors.

7 **A.** Okay, thank you.

8 **Q.** I'll just state for the record that this
9 was -- the testimony of Mr. Hames reflects that the
10 all time number of resident independent contractors
11 by Zip code meaning throughout the time that U.S.
12 Energy has been marketing in this area, where did
13 those contractors live.

14 **A.** Okay.

15 **Q.** The ones that are shaded gray, the ones
16 that are very, very light, are the fewest numbers
17 of contractors in each Zip code and vice versa,
18 okay?

19 JUDGE GILBERT: Vice versa meaning the darkest
20 have the most?

21 MR. CLANCY: The most contractors, right.

22

1 BY MR. CLANCY:

2 Q. Not necessarily currently, but of all,
3 quote, all time. Now, let me ask you to take a
4 look at your Exhibit 8.1.

5 A. Okay, I have it in front of me.

6 Q. So the graphics are similar, only this
7 depicts the number of dispatchers, right?

8 A. Yes, sir.

9 Q. And that means the number of times a Zip
10 code was mentioned in an e-mail where U.S. Energy
11 might be marketing?

12 A. Yes, sir.

13 Q. Do I read this correct that 60628 is one of
14 the largest or one of the highest numbers?

15 A. Yes, because it also made the map on 8.2
16 which was over 30, yeah.

17 Q. Well, why don't we look at 8.2, then.

18 A. That's fine.

19 Q. So 8.2, what are they -- what are the
20 highest Zip codes, the Zip codes with the highest
21 number of dispatches?

22 A. I don't have a color one in front of me and

1 we did it by color, so it's hard for me to tell,
2 sir.

3 Q. All of these have more than 30?

4 A. Yes, sir.

5 Q. And there is a large concentration in
6 60628, 60620 and 60619, right?

7 A. Yes, sir.

8 Q. Slightly fewer, but still on your map, in
9 the four Zip codes directly north of that?

10 A. Yes, sir. Well, I'm sorry, repeat your
11 question, I was reading something.

12 Q. Those four Zip codes in a row, 60629,
13 60636, 60621 and 60637?

14 A. What about those?

15 Q. Are those shaded more lightly, do you know?

16 A. I wish I had a colored one in front of me
17 and this would be a lot easier on us.

18 Q. I tell you what, the map is what it is, so
19 I mean, subject to check, would you agree?

20 A. Yeah, with the exception of 60636, yes,
21 it's a little darker.

22 Q. 60636 looks a little darker?

1 **A.** Yeah, it does.

2 **Q.** And on Exhibit 4.3, it's also a little

3 darker than those four Zip codes on that map?

4 **A.** Yes.

5 **Q.** And 60628, 60620 and 60619 are darker

6 still?

7 **A.** Yes, but your map is showing -- and that's

8 true, but I would just like to point out, and you

9 pointed this out yourself at the beginning, your

10 map is showing aggregate contractors over, what, 5,

11 6, 7 years you guys have have been here. And I'm

12 looking at those e-mails were from February 7th

13 through December of '08. So, I wish you guys had

14 showed me a map of where contractors you had

15 working for you guys lived during those dates, it

16 would shed a little more light on what we're

17 talking about here. But I would agree, as far as

18 those are the same shaded areas, yes, sir.

19 **Q.** You say that Mr. Nicholson's assertion that

20 contractors market where they live should be given

21 little weight; is that right?

22 **A.** That's what I wrote, sir.

1 Q. And that is because you say the Company
2 explained that regional distributors provide the
3 corporate office in Ontario a list detailing future
4 marketing locations, right?

5 A. Yes, sir, that's what I wrote.

6 Q. Do you know if the regional distributors
7 prepared that list or if they submitted that list?

8 A. I don't know, I'm trying to remember, as we
9 sat here, and we talked to those two gentlemen,
10 what they said.

11 Q. You also say on Line 190 that the fact that
12 69 percent of contracts since 2004 did not become
13 effective, because they were rejected for credit
14 concerns, should have set off alarm bells, right?

15 A. Yes, sir.

16 Q. Are you trying to say that 69 percent of
17 all contracts signed were rejected for credit
18 concerns or all contracts rejected were for credit
19 reasons?

20 A. Signed is what I wrote.

21 MR. CLANCY: That's all the questions I've got.

22 Oh, wait. That's all the questions I've got. I --

1 let me go through the exhibits we talked about.

2 JUDGE GILBERT: I have in hand 8, 9 and 10 that

3 you've used as cross exhibits.

4 MR. CLANCY: Right, because I was going to do an

5 11, but that was Hames' 4.3.

6 JUDGE GILBERT: Right.

7 MR. CLANCY: Exhibit 8 was the census data.

8 JUDGE GILBERT: Yeah, by county.

9 MR. CLANCY: Exhibit 9 was the municipals that

10 can't be worked. And Exhibit 10 is the -- called

11 IESC Exhibit 8.12 and it's a list of data. I'll

12 move for the admission of these exhibits.

13 JUDGE GILBERT: All right. Is there objection to

14 any or all of these exhibits?

15 MS. SODERNA: I'm going to object to Cross

16 Exhibit 9, just because I don't believe sufficient

17 foundation was established with the witness as to

18 what this document means. He didn't know anything

19 about it. And it's not marked sufficiently to

20 understand what it means.

21 JUDGE GILBERT: And I've heard him voice some

22 concerns about this exhibit. As I suspect you've

1 already surmised, you have an uphill battle on this
2 one, but if you have anything more to say about it,
3 go ahead.

4 MR. CLANCY: It was produced in discovery. I
5 don't think there is any dispute about the
6 authenticity of it. It is relevant to a couple of
7 questions and answers that went back and forth, so,
8 I mean, it informs the record whether it is given
9 more or less weight upon final consideration, I
10 think is one thing, but it does inform the dialogue
11 back and forth.

12 JUDGE GILBERT: Okay.

13 MS. SODERNA: We don't know, you know, obviously
14 it was accepted and served in discovery. We don't
15 know why these cannot be worked or what the real
16 meaning of this document is without any context.

17 JUDGE GILBERT: Yeah, you probably don't need to
18 say anything more about 9, but I want to know if
19 you have any objections to the other two exhibits.

20 MS. SODERNA: No, I don't.

21 JUDGE GILBERT: Okay. Respondent's Cross
22 Exhibits 8 and 10 are admitted. Respondent's Cross

1 Exhibit 9 is denied admission to the record. Just
2 as a housekeeping question, at the top of 10, as
3 you said, Mr. Clancy, it's denominated
4 Exhibit 8.12. I assume this was part of a data
5 response?

6 MR. CLANCY: That's right. That's Data Response
7 Exhibit 8.12.

8 JUDGE GILBERT: Just so we're clear, as an
9 exhibit, in our record, this exists as Respondent's
10 Cross Exhibit 10.

11 (Whereupon, Respondent's
12 Cross Exhibits Nos. 8 and 10 were
13 admitted into evidence as
14 of this date.)

15 JUDGE GILBERT: I have some very brief questions.
16 I know everyone would love to break and I'm going
17 to facilitate that, but let me just ask these very
18 quickly.

19 EXAMINATION

20 BY

21 JUDGE GILBERT:

22 Q. On Page 7 at the bottom, Line 170, you

1 refer there to marketing efforts. In your
2 attachments, which are labeled Exhibits 1 -- I'm
3 sorry, 8.1 and 8.2, you refer to dispatches.
4 What's a marketing effort, what is a dispatch, are
5 they different things?

6 **A.** I interpreted the e-mails to mean this is
7 where the company was going to be marketing in the
8 future. So to me -- and at the time, all we knew
9 was these came from, I believe, someone within the
10 Company to the utility companies and so it was
11 unclear, I knew it was going to be a marketing
12 effort, I knew there was going to be -- and then
13 also we were talking about efforts and dispatches.
14 So when I used the word dispatch I was implying
15 that someone from the Company was sending people
16 there. And effort means where they will be
17 marketing.

18 **Q.** Line 170, when you refer to marketing
19 efforts, you are not then referring to the number
20 of approaches by contractors to customers doors,
21 are you?

22 **A.** Right.

1 **Q.** Right meaning you are not?

2 **A.** No, not the number of approaches, I just
3 know that that Zip code showed up on the list. So
4 maybe there were a number of marketers in that
5 area, I don't know that. Alls I know was that Zip
6 code was listed as somewhere U.S. Energy would be
7 marketing. But how many marketers, I didn't know.

8 **Q.** So what you mean is -- by marketing effort
9 there, the daily marketing permission that's
10 reflected in the documents from which you drew that
11 number?

12 **A.** Yes, sir.

13 **Q.** And that that could include one or more
14 actual contractors in the field?

15 **A.** Yes, sir.

16 **Q.** But that's what you're counting?

17 **A.** Yes.

18 **Q.** And then when you are referring to
19 dispatches on Exhibits 8.1 and 8.2, are you talking
20 about the same thing?

21 **A.** Yes, sir. I should have kept the words
22 consistent.

1 **Q.** And my only other question, on Page 2, your
2 question that begins on Line 33, and I'm just
3 interested in the first two sentences there from
4 Line 35 to Line 38. Just take a quick look at
5 those.

6 **A.** I've read them.

7 **Q.** And on Line 36, over on the right, you
8 refer to monthly usage amounts. And on Line 37 you
9 say for customers of 1,325 therms per year. So
10 what's the relationship of the monthly usage amount
11 and the total annual usage on Line 37? Are you
12 assuming level usage over 12 months?

13 **A.** No. It's weighted more heavily in the
14 winter than in the summer. There is more in our
15 monitor.

16 JUDGE GILBERT: All right, that's all I have. We
17 are going to take a break for redirect, we're not
18 going to go to lunch just yet, but we will take a
19 break. Do you want to do redirect?

20 MS. SODERNA: A couple questions.

21 JUDGE GILBERT: Why don't you spend that time
22 with your witness because I think a break is

1 absolutely necessary right now.

2 (Break taken.)

3 JUDGE GILBERT: Let's go back on the record for
4 redirect with Mr. McDaniel.

5 REDIRECT EXAMINATION

6 BY

7 MS. SODERNA:

8 Q. Mr. Clancy asked you some questions about
9 your Exhibit 8.2 and Mr. Hames' Exhibit 4.3, which
10 show various forms of where -- Mr. Hames' Exhibit
11 4.3 demonstrating where the independent contractors
12 reside. And your exhibit showing where contracts
13 or where the marketers were sent, pursuant to the
14 e-mails. Did you mean that there is no correlation
15 between contracts signed and the marketing areas
16 you identified?

17 A. No.

18 Q. And when you compared your exhibits -- your
19 Exhibit 8.2, which actually I have an extra couple
20 of color copies and since we already paid for them,
21 what did you conclude from comparing those two
22 maps?

1 **A.** I concluded that there is a correlation
2 between where marketers are supposed to live and
3 where they market.

4 **Q.** And does that change your analysis in your
5 surrebuttal testimony at all?

6 **A.** No.

7 MR. CLANCY: I'm sorry, could you repeat the last
8 two questions and answers, I just want to make sure
9 I didn't miss something.

10 (Whereupon, the record was
11 read as requested.)

12 JUDGE GILBERT: Just so I'm clear, when you
13 compare which two maps?

14 MS. SODERNA: Mr. McDaniel's Exhibit 8.2, which
15 is the dispatches he calculated from the e-mails
16 that we were discussing, and Mr. Hames' Exhibit
17 4.3, which is where the independent contractors
18 actually reside.

19 JUDGE GILBERT: Okay. Thank you. No need, then,
20 to repeat what you already did, I just wanted to
21 clarify that.

22

1 BY MS. SODERNA:

2 Q. And why does that not change your analysis?

3 A. What portions of my analysis are you

4 speaking about?

5 Q. Your conclusion about where U.S. Energy

6 most heavily markets.

7 A. My conclusion was that they targeted low

8 income minority communities.

9 Q. And did the comparison of these two maps

10 change that conclusion?

11 A. No.

12 Q. Why not?

13 A. Because the marketers are -- you're talking

14 about the map of where the marketers live and the

15 map I did?

16 Q. Right.

17 A. Because it looks like there is a

18 correlation between the two maps.

19 Q. Okay. That's all I have.

20 JUDGE GILBERT: Is there any recross within the

21 scope of the redirect?

22 MR. CLANCY: No, no questions, your Honor.

1 JUDGE GILBERT: Thank, Mr. McDaniel.

2 (Witness excused.)

3 JUDGE GILBERT: That concludes, I think, the
4 morning portion, morning and early afternoon
5 portion of the hearing. It's now about 1:10,
6 perhaps. Let's break until 2:00. We'll remain in
7 this room, we'll have our telephone witness, whose
8 first name is Lucy and then we'll have Mr. Agnew,
9 we'll move to the video conference room for that
10 testimony and that should be the end of it. Okay,
11 so I'll see you back in this room at 2:00 o'clock.

12 (Luncheon recess.)

13 JUDGE GILBERT: Let's go back on the record for
14 our afternoon session. First order of business is
15 presenting the testimony of CUB Witness Vargas, who
16 is not present with us and whose testimony will be
17 admitted by affidavit. I'm not sure what
18 formalities really we need to do.

19 MS. SODERNA: CUB would request the admission of
20 CUB Exhibit 10.0, the affidavit of Ms. Katherine
21 Vargas.

22 JUDGE GILBERT: And?

1 MS. SODERNA: And CUB Exhibit 3.0, which is Ms.
2 Vargas' direct testimony and CUB Exhibit 6.0 which
3 is Ms. Vargas' rebuttal testimony.

4 JUDGE GILBERT: Is there any objection to the
5 admission of these exhibits or to their admission
6 by affidavit?

7 MR. McMANAMAN: No objection, your Honor.

8 MS. LIN: No.

9 JUDGE GILBERT: Then CUB 3.0, which is the direct
10 testimony; CUB 6.0, which is the rebuttal testimony
11 and CUB 10.0, which the supporting affidavit, are
12 all admitted into evidence.

13 (Whereupon, CUB Exhibits Nos.
14 3.0, 6.0 and 10.0 were
15 admitted into evidence as
16 of this date having been
17 previously filed on e-docket.)

18 JUDGE GILBERT: And now our next witness will be
19 participating by telephone, if you want to go ahead
20 and set that up.

21 David Gilbert, I'm the administrative
22 law judge in the case. Can you hear me? Lucy,

1 could you pronounce your last name?

2 MS. JODLOWSKA: Jodlowska.

3 JUDGE GILBERT: I'm going to go through the

4 awkward process of swearing you in by telephone.

5 (Witness sworn.)

6 LUCY JODLOWSKA,

7 called as a witness herein, having been first duly

8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY

11 MS. SODERNA:

12 Q. Lucy, can you hear me, this is Julie

13 Soderma?

14 A. Yes, I can.

15 Q. Can you please state your full name for the

16 record?

17 A. My full name is Lucina Jodlowska, I go by

18 Lucy.

19 Q. And did you prepare written testimony for

20 this proceeding?

21 A. Yes, I did.

22 Q. And is that -- do you have that testimony

1 before you?

2 A. Yes, I do.

3 Q. And is that labeled as the CUB Exhibit 1.0,
4 the direct testimony of Lucy Jodlowska on behalf of
5 the Citizens Utility Board?

6 A. Yes, it is.

7 Q. And if I asked you the same questions in
8 this document today, would your answers be the
9 same?

10 A. Yes, they would be.

11 Q. Do you have any changes or corrections to
12 your testimony?

13 A. I do not, no.

14 Q. And is this testimony true and accurate to
15 the best of your knowledge and belief?

16 A. Yes, it is.

17 Q. And with that you also submitted CUB
18 Exhibit 1.1, correct?

19 A. Yes.

20 MS. SODERNA: And with that, I would request the
21 admission of CUB Exhibit 1.0 and CUB Exhibit 1.1.

22 JUDGE GILBERT: Any objection?

1 MR. McMANAMAN: No objection.

2 JUDGE GILBERT: CUB 1.0 and 1.1 are admitted.

3 (Whereupon, CUB Exhibits Nos. 1.0
4 and 1.1 were admitted into
5 evidence as of this date having
6 been previously filed on
7 e-docket.)

8 JUDGE GILBERT: Is there cross examination?

9 CROSS EXAMINATION

10 BY

11 MR. McMANAMAN:

12 Q. I do have a couple of questions, Ms.
13 Jodlowska. Hi, my name is Martin McManaman I'm a
14 lawyer that represents Just Energy, which was
15 formally known as U.S. Energy Savings Corp.

16 A. Okay.

17 Q. And I'm just going to ask you a couple of
18 questions about your direct testimony. Do you have
19 a copy of that in front of you?

20 A. Yes, I do.

21 Q. Can I ask you to turn to Page 5, please?

22 A. Sure. Okay.

1 Q. And you see there is a question on Line 86?

2 A. Yes, um-hmm.

3 Q. And then I have a question for you about

4 your answer on Lines 87 and 88.

5 A. Um-hmm.

6 Q. You indicate that once U.S. Energy failed

7 to substantiate their offer, I reported on the

8 allegations and they were marked with an

9 unsatisfactory rating. Do you see that?

10 A. Yes.

11 Q. When did you do that?

12 A. This, I believe, was -- it must have been

13 at least 3 years ago. I don't have the exact dates

14 memorized.

15 Q. But you think it was sometime in 2006?

16 A. I believe so. Either 2005 or 2006, which

17 was after -- well, let's see. This would have been

18 after the response that was provided to us in

19 writing, but that would be the logical timeline

20 after we had received the response and the U.S.

21 Energy basically refused to provide the

22 information, that's when our report would have been

1 updated.

2 Q. And then I also have a question for you on
3 next page, Page 6.

4 A. Um-hmm.

5 Q. In the middle of the page, on Line 107.

6 A. Okay.

7 Q. You say that you have personal knowledge of
8 about 491 inquiries and complaints?

9 A. Correct.

10 Q. And that's concerning U.S. Energy Savings
11 Corp, correct?

12 A. Yes.

13 Q. What timeframe is that from?

14 A. This is from 2005. This was from 2005.
15 This was from the very first complaint that was
16 filed with our office. Besides the actual
17 personnel that go through complaints and the
18 inquiries -- the complaint intake process. Once
19 there is a case that is forwarded to the
20 investigations department, which I was in charge
21 of, then my responsibility would be to go through
22 the complaints again as a separate individual.

1 So I would basically go through, in
2 addition the actual procedure, which was between
3 the company, the consumer and our complaint handler
4 or specialist, I would also be in charge of doing a
5 complete review of the complaint and the
6 information that came in to us. So this was --
7 basically I would have to read every complaint and
8 the nature of the complaint, as well as any
9 additional information that would come in with
10 regards to the Company.

11 **Q.** Okay. And then I also have a question for
12 you on Page 7.

13 **A.** Okay.

14 **Q.** Well, actually before I ask you that, have
15 you investigated complaints and inquiries for --
16 concerning companies other than U.S. Energy Savings
17 Corp?

18 **A.** Oh, yes, dozens of them. That was my job,
19 my job was to investigate complaints for not only
20 companies in the same industry, but pretty much any
21 industry that our organization would take
22 complaints for. There is exceptions of businesses

1 or organizations that we would not handle
2 complaints for, two of them being the medical
3 profession or professional -- professions such as
4 attorneys and attorney complaints, which we would
5 not handle.

6 But other than those two, off the top of
7 my head, I would handle and review complaints and
8 files for companies in pretty much every industry
9 that we would accept complaints against.

10 Q. So that would include retailers of all
11 kinds of products and services?

12 A. Yes.

13 Q. Did you ever investigate a retailer that
14 had more an a 100,000 sales in a year?

15 A. Yes.

16 Q. And how many of those?

17 A. We regularly investigated and looked at the
18 companies that are national in scope, citywide,
19 statewide, national in scope. And so the purpose
20 of this investigation, I'm not sure if I'm allowed
21 to name the companies, that would be a breach of
22 privacy on behalf of the BBB, but we have regularly

1 and continued to investigate companies on a
2 national and also international scale.

3 Q. Did you ever investigate a retailer that
4 had a 100,000 transactions in Chicago alone, in a
5 year?

6 A. I can't think of specific numbers, but I
7 would be confident in saying, yes. That yes, we
8 have, again, without naming specific companies,
9 because that would be a privacy issue, we have
10 investigated anybody from a mom and pop shop to a
11 major national retailer.

12 Q. How many retailers like that with more than
13 a 100,000 transactions in the Chicago area in a
14 year did you investigate when you were at BBB? And
15 let me just make clear, I'm just asking where you
16 were involved in the investigation, not where your
17 organization was involved.

18 A. I can't say a specific number, at least
19 several.

20 Q. Would you say that it's less than five?

21 A. Probably more, I would say more than five.

22 Q. More than 10?

1 **A.** I don't know, I simply don't know, probably
2 that would be a legitimate number, I would say on
3 that scale. But my job was mostly fundamentally
4 concerned with investigating companies, regardless
5 of their size.

6 **Q.** Do you -- now, am I correct in
7 understanding that your investigation with respect
8 to U.S. Energy Savings Corp spanned from 2005 to
9 sometime in 2008?

10 **A.** Correct.

11 **Q.** Do you know how many contracts U.S. Energy
12 Savings Corp had entered into with customers over
13 that period of time?

14 **A.** I don't actually know that information, no.
15 But that is something that -- the number of
16 transactions and number of sales made is the very
17 first thing that every single company that we
18 investigate tells us in any given investigation,
19 which is not an indicator of their wrongdoing or
20 lack of wrongdoing, because we have seen many cases
21 where the number of complaints is not congruent in
22 any capacity to the number of transactions, which

1 is not an issue with regard what the company's
2 fundamentally doing wrong in any given situation.

3 I see what you're indicating and that is
4 the very first thing that we are asked by companies
5 that we ask to come and see the Better Business
6 Bureau or we investigate. They question our
7 knowledge of transactions, number of sales made,
8 but, again, that is not indicative, in our
9 organization as a whole, of the ratio of complaints
10 versus amount of sales. It could be a factor, but
11 it's definitely not a deciding factor of whether a
12 company was doing something wrong or not.

13 Q. That is something you want to take into
14 consideration, though, right?

15 A. It is a factor, correct. But -- we are
16 fundamentally concerned, when we are looking at an
17 investigation, is a company doing something that is
18 misleading, that is perpetual in scope, that is
19 consistently present in complaints. We are not
20 looking for things that are common in the industry,
21 that would be normal practices, based on the
22 industry that we're looking into.

1 If things are repetitive, that are
2 alleged misrepresentation, fraud, intentional
3 confusion of the consumer, those are common things
4 that we recognize all across the board that are
5 very much different in scope and capacity than
6 regular complaints against any large company or
7 small.

8 MR. McMANAMAN: I don't have any other questions,
9 your Honor.

10 JUDGE GILBERT: Does staff have any cross?

11 MS. NAUGHTON: No, I guess not.

12 JUDGE GILBERT: Okay. I just have one line of
13 inquiry.

14 EXAMINATION

15 BY

16 JUDGE GILBERT:

17 Q. Regarding your exhibit, CUB Exhibit 1.1.

18 A. Okay.

19 Q. As I read through it, it became apparent
20 that this reliability report was compiled over
21 time, correct?

22 A. Um-hmm.

1 **Q.** Can you identify which portions of this
2 report were compiled and made available for the
3 public when?

4 **A.** What you're looking at, I believe, is the
5 actual report that you're looking at, that was
6 submitted this August of 2008, so approximately a
7 year ago and a couple months. And so the way that
8 the Better Business Bureau reports is on 36 months,
9 so exactly 3 years of activity of any given date in
10 real time. So, the number that you would see today
11 would be probably different, it is different, it's
12 probably closer to 500 complaints, I imagine.

13 But we also have a number of complaints
14 that are past our statute of limitations on
15 reporting. So we actually have substantially more
16 complaints than would be indicated because we
17 only -- we will report on the number of complaints
18 that we have closed within a 36-month period of
19 time. So what you are looking at is activity
20 within -- that occurred between, let's see,
21 November 8th, 2005 -- or I'm sorry, August 8th,
22 2005, and August 25th -- basically 3 years as of

1 August 25th, 2008. The report today would look
2 different because it changes in real time on a
3 daily basis.

4 Q. Let me divert for a moment, just to
5 something you said, you referred to a statute of
6 limitations. Is that an internal BBB reference or
7 are you referring to an actual Illinois statute?

8 A. No, no, that is a Better Business Bureau
9 reference. Our organization as a whole, not only
10 the Chicago chapter, but all of the organizations
11 across the United States, report on data for
12 36 months. That is information that is publically
13 available on the reports. We still maintain all
14 the information we have since day one of when we
15 received complaints, data, information, whatever
16 the case may be.

17 However, the only things that are
18 reported publically is what is 36 months as of the
19 correct time. And the reason for that is because
20 we try to maintain information that is the freshest
21 and as relevant as possible. And the Better
22 Business Bureau, as a whole, determined that

1 3 years would be a good time to report on the most
2 critical timeframe of a company's operations. That
3 is not a reference to any Illinois statute, no.

4 Q. Okay. So if I look at the first page of
5 the reliability report and I see the file open date
6 there, which is May 2004, the information that
7 continues on that page, through to the end,
8 probably doesn't actually include anything going
9 back to May 2004?

10 A. We might have opened the file, but in terms
11 of the actual -- I'm talking about the complaint
12 matrix. The complaints, we might have opened the
13 file earlier, just in terms of opening a file, but
14 I'm talking about the amount of complaints that we
15 report and how they are closed. So the number of
16 complaints that would be quoted would start, that
17 timetable would be measured based off of the first
18 complaint that is actually formally filed.

19 Q. And then if you look down from the file
20 open date two lines there to the BBB accreditation
21 and the statement that the company is not
22 accredited with the BBB, that would have been true

1 as of August 25th, 2008?

2 A. Yes.

3 Q. And do you know if that's still true today?

4 A. Yes, the U.S. Energy has not been
5 accredited at any point by the Better Business
6 Bureau.

7 Q. And as of -- reliability reports are
8 updated by the Bureau. Are those updates made
9 available to the public right away or in what
10 timeframe would the public be made -- I'm sorry,
11 made aware of this new information once you've made
12 a change to a report?

13 A. Well, that depends on the type of
14 information that it is. If it's -- if it's a
15 complaint within the actual complaint matrix, our
16 system is very much automated to make sure that all
17 complaints are reported on and closed within the
18 same parameters. So we don't have any -- basically
19 that would encourage and insure equal treatment of
20 every single complaint in terms of the deadlines
21 and timelines of how complaints are closed.

22 So if we close a complaint or if our

1 system closes a complaint, let's say a timeline
2 runs out and a company did not respond or a
3 complainant did not follow through, then that
4 complaint would be, depending on the nature of the
5 case, that complaint would be closed in one of a
6 number of different ways. And that information
7 would become available in real time immediately,
8 probably within 10 or 15 minutes.

9 In terms of the manual write up, let's
10 say the information that we are reporting on as a
11 result of interaction with the company or if we get
12 an advertising substantiation or a pattern
13 analysis, that would be something that we would
14 develop and discuss with our team. And depending
15 on the final outcome of our investigation, that is
16 when we would put that information in the report.

17 However, we -- what we try to do is
18 whenever there is a problem or issue or concern or
19 allegations by consumers that are concerning,
20 whether it's advertising or just some kind of an
21 offer that is not clear and there is no
22 substantiation, then we would contact the company

1 first and give the company an opportunity to
2 respond to those allegations and we would basically
3 ask for verification or some sort of substantiation
4 of that offer or proof that that is in fact
5 something that is legitimate, depending on the
6 industry and the case. So we would initiate
7 contact with company on that sort of offer and then
8 wait to update the report until such time as we
9 receive the response from the company.

10 **Q.** Okay, so for example, on Page 3 of the
11 report, under sales practice issues, which would
12 probably be the most relevant to the case at hand,
13 each time a complaint that would fall within one of
14 these categories is resolved -- well, the tally is
15 changed and that tally is made immediately
16 available to the public; is that correct?

17 **A.** Yes, yes, um-hmm. That is something that
18 changes immediately within our system and that is
19 the way our system was designed due to the heavy
20 load of complaints that we handle. A lot of the
21 closures, depending on the outcome of the case,
22 that would trigger automatic change in the actual

1 report. So the numbers that you see are the most,
2 the most current based on data available that day.
3 So there would be no delay. If a complaint handler
4 or one of our team members closes a complaint that
5 is either resolved or unresolved or if a consumer
6 indicates online within our system that a complaint
7 has been resolved then that change would take place
8 automatically and would be updated in live time
9 within minutes.

10 JUDGE GILBERT: Okay, thank you. Is there going
11 to be redirect?

12 MS. SODERNA: No.

13 JUDGE GILBERT: Okay. Sounds like we're done.
14 CUB's counsel has indicated that she does not
15 intend to do redirect examination. So we're
16 completed. Thank you very much.

17 (Witness excused.)

18 JUDGE GILBERT: Let the record reflect we have
19 now changed rooms, we moved to the video conference
20 room here at the Commission for our final witness,
21 Mr. Agnew, on behalf of the staff. Mr. Agnew, can
22 you see me.

1 MR. AGNEW: Yes.

2 (Witness sworn.)

3 JAMES AGNEW,

4 called as a witness herein, having been first duly

5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY

8 MS. LIN:

9 Q. Mr. Agnew, can you please state your full
10 for the record, spelling your first and last name
11 for the court reporter?

12 A. It is James, J-a-m-e-s; Agnew, A-g-n-e-w.

13 Q. And who do you work for and what position
14 do you have?

15 A. The Illinois Commerce Commission, my
16 position is consumer policy analyst.

17 Q. Can you tell us a little bit about what you
18 do on a daily basis?

19 A. Right now what I do has a lot to do with
20 the Code Part 280 rulemaking. But in general, what
21 the policy analysts do is analyze the various
22 complaints that are in our database, the contacts

1 that are in our database that come in from
2 consumers and based on the information in there,
3 provide policy suggestions to management, try to
4 implement different kinds of solutions to overall
5 problems.

6 Q. Did you file or cause to be filed testimony
7 in this matter, specifically ICC Staff Exhibit 1.0,
8 a public and a confidential version and ICC Staff
9 Exhibit 2.0, a public and a confidential version,
10 your direct and rebuttal testimonies in this
11 matter?

12 A. Yes, I did.

13 Q. And is everything in your direct and
14 rebuttal testimony true and accurate to the best of
15 your knowledge and belief?

16 A. Yes, it is.

17 Q. And if I asked you the same questions in
18 your direct and rebuttal testimonies today, would
19 your answers be the same?

20 A. Correct.

21 MS. LIN: Judge, at this time I would like to
22 move for admission into evidence of ICC Staff

1 Exhibits 1.0 and 1.0C, as you have indicated you
2 would prefer them to be titled, along with ICC
3 Staff Exhibit 2.0 and 2.0C, which also has a
4 confidential attachment and it was named
5 Exhibit 3.01D, only because we had attached that
6 exhibit as it was attached to one of the Company's
7 DR responses and that's a confidential attachment.

8 JUDGE GILBERT: I would like to change that
9 designation.

10 MS. LIN: That's fine, we can name that 2.1C.

11 JUDGE GILBERT: Is there any objection to the
12 admission of either the testimonies or the
13 attachment?

14 MR. CLANCY: No objection.

15 JUDGE GILBERT: Staff 1.0, 1.0C, 2.0, 2.0C and
16 2.1C are admitted.

17 (Whereupon, ICC Staff
18 Exhibits Nos. 1.0, 1.0C, 2.0,
19 2.0C and 2.1C were
20 admitted into evidence as
21 of this date having been
22 previously filed on e-docket.)

1 JUDGE GILBERT: Is there cross examination?

2 CROSS EXAMINATION

3 BY

4 MR. CLANCY:

5 Q. Good afternoon, Mr. Agnew, Kevin Clancy on
6 behalf of the respondent. In your direct testimony
7 you testify that in your view, the independent
8 contractors for U.S. Energy are able to, with no
9 field oversight, are able to disregard or otherwise
10 stray from the script and the instructions in
11 written sales manuals; is that right?

12 A. Can you direct me to that page?

13 Q. I apologize, it's Line 184 to 185.

14 A. Okay. I see that here.

15 Q. Would you agree that the IC's, as I'll call
16 them, can't stray from the instructions in their
17 scripts if somebody supervising them is monitoring
18 them at the time, right?

19 A. So long as the supervisor would not allow
20 them to stray from the script. If there was
21 someone monitoring that actual conversation on the
22 porch, because as I understood it from Mr. Potter's

1 testimony yesterday, they're no longer going inside
2 houses, it's happening outside the door. So long
3 as the supervisor was listening and the supervisor
4 did not tolerate them straying from the script, I
5 suppose that they wouldn't be allowed to stray from
6 the script. That seems true.

7 Q. If -- you're familiar with the verification
8 call that is conducted with these transactions,
9 right?

10 A. I am somewhat familiar with those. I think
11 we've heard a couple of them in the course of this
12 case.

13 Q. And just to clarify, you've been listening
14 in on all the testimony as it's been given
15 throughout the case?

16 A. Absolutely, yes. I appreciate everyone
17 there allowing me to do that.

18 Q. Absolutely. Wouldn't you agree that an
19 independent contractor can't stray from the script
20 or from his or her instructions if the customer
21 truthfully answers the questions on the
22 verification call?

1 **A.** I could not agree with that.

2 **Q.** Why is that?

3 **A.** I believe that the private conversation
4 that has no recording that goes on before the
5 third-party verifier is brought in, doesn't appear
6 to have any means of being monitored. So you would
7 have someone make representations during that
8 conversation that -- and it's also my understanding
9 that quite often the sales agent has not left while
10 the third-party verification is going on.

11 So the sales agent is standing next to
12 or over or somewhere in the proximity of the
13 customer who is then participating in, I think
14 there's been a variety of third-party verifications
15 that the Company has used over time those have
16 evolved. But I don't believe that just because the
17 customer answers things affirmatively in a
18 third-party verification, that automatically
19 disqualifies the salesperson from having said
20 anything off script.

21 **Q.** Well, let me ask you to take a look at what
22 was marked as IESC Exhibit 1.7.

1 **A.** Sure.

2 **Q.** On Page 216, USE 216, about the third page?

3 **A.** Got it.

4 **Q.** And this is a script with a date at the
5 bottom of April 2nd, 2008.

6 **A.** Right.

7 **Q.** Or February 4th, 2008. Although I think
8 that it's April 2nd. It's February 4th, because
9 it's Canadian. Either way, it's early 2008.

10 Toward the middle of the page there is a line that
11 says customer name and it says, can you kindly
12 confirm by responding with the word yes that you
13 understand this agreement does not promise savings,
14 however it does offer peace of mind, stability and
15 protection against volatile energy prices?

16 **A.** Yeah, I see.

17 **Q.** If a customer truthfully answers that
18 question yes, are you saying it's still possible
19 that they've been misled into thinking that it
20 promises savings?

21 **A.** Right. I believe that the face-to-face
22 presence, the presence of the sales agent being

1 there physically, with the customer, is a much
2 stronger thing than any phone call or piece of
3 paper that any of us could look at. I don't
4 believe that it automatically disqualifies the
5 sales agent from having said things that don't
6 follow what Mr. Potter would like them to follow.

7 Q. Okay, but in that case the customer would
8 not be telling the truth. He or she would be
9 saying, yes, I understand this doesn't promise
10 savings, but in the back of their mind thinking I
11 think it does promise savings?

12 A. I'm not sure whether or not it means the
13 customer is lying. I think it means, to me, that
14 the presence of the salesperson is a much more
15 overriding power than anything that can happen on a
16 document or in a phone call.

17 And so, I believe that the salesperson
18 might be able to influence things through the
19 private conversation that happens before any
20 third-party or even management at the Company is
21 able to monitor that conversation. And to -- the
22 other aspect that is of some concern to me is that

1 the salesperson is still there while this
2 third-party verification is there. We have heard
3 testimony that customers have been coached and
4 thing like that, by the salesperson. And so I have
5 a serious concern, especially if the salesperson is
6 still there.

7 Q. Is it possible for a customer to understand
8 that this agreement does not promise savings and at
9 the same time to not understand that this agreement
10 does not promise savings? Can both of those
11 statements be true at the same time?

12 A. It sounds like you are posing a logical
13 fallacy.

14 Q. I am. And my question, I'll clarify for
15 you, is this statement, I understand this agreement
16 does not promise savings. Can that statement be
17 both true and false?

18 A. That statement on its own, I don't know how
19 that could be both true and false.

20 Q. Thank you, that's the answer to my
21 question. Do you understand that there are
22 consequences for the independent contractor when

1 the verification call fails, that is when the
2 contractor fails to obtain the verification call?

3 A. I'm sorry, can you repeat that?

4 Q. Do you know there are consequences for the
5 independent contractor when the verification call
6 fails?

7 A. I'm not entirely familiar with what those
8 consequences might be. So when the TPV doesn't
9 work, the salesperson is punished?

10 A. Right. Were you present yesterday for the
11 testimony -- by telephone for the testimony of
12 Mr. Potter.

13 A. Yes.

14 Q. Do you recall testimony that if the
15 customer does not confirm the sale through the
16 verification call, the contractor is penalized \$25?

17 A. I don't recall that specific conversation,
18 but if you're saying it was said, subject to check,
19 I suppose I can agree with that, for wherever this
20 is going.

21 Q. Let me ask you to take a look at Exhibit
22 5.9, that's also public.

1 **A.** Okay, I've got it.

2 **Q.** And I apologize, it's not a very good copy,
3 but do you see in the middle of the agreement, this
4 is a --

5 **A.** Are we on the first page?

6 **Q.** Well, the first page of the exhibit, not
7 the cover page, this is a customer agreement dated
8 July of 2008.

9 **A.** Right.

10 **Q.** And in the center it says, I understand and
11 accept. The first line is, this agreement offers
12 price stability and does not guarantee financial
13 savings.

14 **A.** And I would --

15 **Q.** Well, I haven't --

16 **A.** Go ahead, I'm anticipating too much here.

17 **Q.** You're doing a very good job, because
18 you're right on target. If the customer answers
19 this -- signs this truthfully, doesn't that
20 indicate that the customer understands the
21 agreement does not guarantee savings?

22 **A.** I would have to say the same thing I said

1 with regard to the TPV, that the physical presence
2 and presentation, the face-to-face, on the scene
3 presentation of the salesperson, everything else
4 takes a diminished role to that private
5 conversation that happens long before any of these
6 things are considered by any of us in this room.

7 Q. So your answer is no?

8 A. Again, the logical fallacy that you're
9 presenting, can this be signed --

10 MS. LIN: Judge, I'm going to object at this
11 point because Mr. Clancy is asking Mr. Agnew to
12 speculate on what customers do or don't believe
13 while they are signing the contracts. And I don't
14 believe that Mr. Agnew can testify as to what a
15 customer would be thinking at the time of the
16 signing of the contract.

17 MS. NAUGHTON: And I would just like to add, I
18 think what he means by truthfully, although I'm not
19 sure, is that he means the customer has read,
20 understood, is actually listening or -- and
21 literally reading, as opposed to just signing,
22 taking in the information and then deciding to

1 answer either truthfully or not, I think. There is
2 a lot of factors that might go into whether a
3 person just signs without reading.

4 MR. CLANCY: I think that Mr. Agnew has testified
5 that he believes these customers were misled. That
6 means that he believes, first of all, it means he
7 knows what they thought. He knows what they knew
8 and what they didn't know. And he concludes that
9 they were misled. If he's testified as to their
10 state of mind, he ought to be able to be cross
11 examined about that.

12 MS. NAUGHTON: But you're also suggesting a state
13 of mind, truthfulness.

14 JUDGE GILBERT: Can we go back to the original
15 question?

16 (Record read as requested.)

17 JUDGE GILBERT: I'll allow that, he's asking what
18 inference can be drawn from the customer's act of
19 signing and I think that's appropriate.

20 MR. CLANCY: I guess we need to have the question
21 reread.

22

1 (Whereupon, the record was
2 read as requested.)

3 THE WITNESS: Not really knowing what customer
4 signs this truthfully as a phrase might mean, I
5 suppose that in the bubble, if only the contract,
6 if the contract itself were the only thing that
7 occurred, in some kind of vacuum, then I suppose
8 that the answer to this question would be yes. But
9 the problem that we're dealing with is that things
10 are not happening in that kind of a vacuum.

11 BY MR. CLANCY:

12 Q. Let me ask you to look in your testimony
13 just a little further on. I'm going to go to Page
14 11, Lines 211 to 214.

15 MS. SODERNA: It's Page 10, in direct or
16 rebuttal?

17 MR. CLANCY: Direct.

18 BY MR. CLANCY:

19 Q. Referring to those lines, do I understand
20 your testimony correctly here, that the independent
21 contractors, you say they are less affected by any
22 potential deception at the point of sale because

1 they can count on systemic barriers to customers'
2 attempts to cancel their contract. Does that mean
3 that you're saying that they're not -- they're
4 unimpeded in making misrepresentations, because
5 they don't have to worry about the contract being
6 canceled?

7 **A.** I think that's a fair characterization.
8 There is certain kinds of barriers that appeared in
9 the trends in the complaints that customers were
10 having difficulty even getting something canceled.
11 Even if they persevered through the threat of the
12 early termination fee.

13 **Q.** Were you on the phone yesterday for the
14 testimony of Barbara Alexander, when she was
15 testifying about the level of cancelations?

16 **A.** Yeah.

17 **Q.** Do you recall her testifying that the level
18 of cancelations, in her opinion, was so severe,
19 that it was so high, that it reflected problems
20 with the U.S. Energy -- with U.S. Energy's
21 practices?

22 **A.** I think I do remember her saying something

1 like that.

2 **Q.** Do you think that the level of cancelations
3 is high in this case with regard to U.S. Energy's
4 customers?

5 **A.** I think the number of complaints that the
6 staff at the Illinois Commerce Commission Consumer
7 Services Division handle, where the customer was
8 attempting to cancel but was unable to, is
9 problematic.

10 **Q.** Are you aware that there were, in the year
11 2007, there were 25,000 cancelations?

12 **A.** Was that in one of the DR's that was
13 presented during the --

14 **Q.** It was in the direct testimony -- the
15 rebuttal testimony of Mr. Potter at Lines 1047 and
16 1048?

17 **A.** Okay.

18 **Q.** And are you also aware that the number of
19 contracts signed in 2007 was a little under
20 130,000?

21 **A.** Sounds like the numbers that may have been
22 stated yesterday. So you have 25,000 cancelling at

1 the same time that 130,000 are signed up?

2 Q. Right.

3 A. Okay.

4 Q. Does that change your testimony at all in
5 terms of whether you think there are such systemic
6 barriers to cancelation that independent
7 contractors can remain incentive to mislead?

8 A. I don't know what these numbers necessarily
9 represent. What I am commenting on is the content
10 of our complaints. And we were contacted by people
11 who were claiming that they were having a very hard
12 time getting the service canceled.

13 Q. Okay, that's a different issue, though.
14 You are talking about particular customer
15 complaints. My question was, does the fact that
16 there were 25,000 cancelations and 130,000 sign ups
17 change, at all, your conclusion that there are
18 systemic barriers to cancelation?

19 A. No.

20 Q. Do you know what the consequence is for an
21 independent contractor when a contract he signed up
22 is canceled?

1 **A.** I think you cited something earlier with
2 the verification call. Is it that the commission
3 is clawed back from them and there may also be a
4 \$25 penalty. I've seen different versions. Again,
5 there is lot of moving targets here, because
6 documents have evolved over time.

7 **Q.** Okay, well, you're right, the commission is
8 clawed back if the contract is canceled.

9 **A.** Yes.

10 **Q.** And the commission is \$50 per contract,
11 right?

12 **A.** Regardless of the length of the contract,
13 they get 50 bucks?

14 **Q.** They get more if the contract goes on.

15 **A.** They get maintenance?

16 **Q.** Right.

17 **A.** Okay.

18 **Q.** With respect to the regional distributors,
19 do you understand that -- you testify that in your
20 view there is a problem with the commission
21 structure for regional distributors because they
22 are paid on the commissions that the independent --

1 the contracts that the independent contractor
2 signs; is that right?

3 **A.** I think there is a problem with that being
4 their sole form of compensation from the Company.
5 They are still being paid as if they are
6 salespersons only. And the Company seems to want
7 to call them managers at some point and not
8 managers at others. And I am merely pointing out
9 the fact that they are now being compensated as if
10 they are managers that have concerns that have to
11 do with compliance.

12 **Q.** Before I get to that, are you aware that
13 the regional distributor's commission is also
14 clawed back in the event of a cancelation?

15 **A.** Right.

16 **Q.** And that commission is \$10?

17 **A.** Okay.

18 **Q.** So -- and again, this is just assuming that
19 there isn't any finding, any penalty assessed for
20 any finding of a violation of a code of conduct, no
21 matter what happens, you are aware that a canceled
22 contractor results in the distributor losing \$10?

1 MS. NAUGHTON: I'm going to object and it's maybe
2 just a clarification, but when you are using the
3 termed canceled, what do you mean? Do you mean for
4 any reason? Are we talking about, I know you
5 canceled contracts if somebody, for instance,
6 doesn't have a good credit? Are we talking about
7 all cancelations?

8 I mean, yes, Jim is saying yes, but I
9 think he's making an assumption and I just want to
10 make sure we're on the same page.

11 MR. CLANCY: Perhaps what I should do is clarify
12 that a commission can only be clawed back if it's
13 already been paid. If it's canceled before a
14 commission is paid, it isn't clawed back, you just
15 don't get it.

16 MS. NAUGHTON: So not for the credit thing. So
17 Jim -- I just want to make sure Jim's assumption is
18 correct in the way you are describing it.

19 BY MR. CLANCY:

20 Q. So either you don't get the commission or
21 if it has been received already, it's clawed back.
22 Is that your understanding?

1 **A.** That sounds like a reasonable description
2 of it. I guess I would add, Mr. Clancy, is that at
3 any time?

4 MS. NAUGHTON: I don't know if we want him to
5 start testifying.

6 THE WITNESS: Oh, okay, I'm sorry.

7 BY MR. CLANCY:

8 **Q.** Are you aware -- let me just ask you, about
9 the managers, are you saying that managers, to be a
10 true manager, you can't have incentive
11 compensation?

12 **A.** I don't think it should be their only form
13 of compensation, as far as if you're talking about
14 the incentives being solely sales, if you're
15 putting them in charge of doing things that are not
16 just sales, not just procuring sales, then I don't
17 know why you would want to say all of your
18 compensation comes out of this, but you've got to
19 do these other things.

20 **Q.** But just to clarify again, commissions are
21 only paid for successful sales, right?

22 **A.** Yeah, I haven't heard of you paying for

1 sales that don't work.

2 Q. And we don't pay for sales that get
3 canceled?

4 A. Right.

5 Q. So what is the incentive for a regional
6 distributor to sign up a contract that is going to
7 be canceled?

8 A. They get the commission. And then if the
9 person is unable to cancel, they still have the
10 commission.

11 Q. Right. Okay. You have a background in
12 commission sales; isn't that right?

13 A. A very brief one.

14 Q. It was for about a year?

15 A. Yes.

16 Q. Were you incented to commit fraud or
17 mislead customers?

18 MS. LIN: Objection, Judge, it's irrelevant.

19 MR. CLANCY: I think it's completely relevant.
20 This witness has testified that contractor's paid
21 on commission are incented to mislead.

22 MS. NAUGHTON: He's not saying all contractors

1 paid on commission will all commit fraud.

2 MR. CLANCY: I'm not asking if he did commit
3 fraud or mislead, I'm asking if he was incited to
4 commit fraud or mislead.

5 JUDGE GILBERT: It's overruled, go ahead.

6 THE WITNESS: My employer at the time had a no
7 questions asked, satisfaction guaranteed, money
8 back, 100 percent and they did claw back your
9 commission. So there were no barriers. You walked
10 into the Sears shoe department with a set of shoes,
11 no matter how beat up they were, and said these are
12 no good, I'm returning them, we took them back. So
13 no, I was not incentivized to lie about the shoes.

14 BY MR. CLANCY:

15 Q. Are you aware that -- you talk about the
16 absence of direct management in the sort of I'll
17 call it on the ground here in Illinois. Are you
18 familiar with the testimony regarding the visits
19 from individuals from the U.S. Energy home office
20 to the Illinois offices?

21 A. Is that one of the exhibits?

22 Q. Yeah, Exhibit 5.1C?

1 **A.** I've got to right here. Am I familiar with
2 this document?

3 **Q.** Right.

4 **A.** Yes.

5 **Q.** Do these visits from individuals in home
6 office to the offices here in Illinois affect any
7 of your conclusions or your testimony about the
8 oversight that U.S. Energy provides?

9 **A.** No.

10 **Q.** Are you aware that there is currently a new
11 position that's been established with U.S. Energy,
12 a non-commission based position held by Dan Brown?

13 **A.** We were made aware of that yesterday.

14 **Q.** Do you recall the testimony with regard to
15 Mr. Brown's responsibilities and the scope of his
16 role?

17 **A.** Right.

18 **Q.** When you testify that U.S. Energy needs to
19 establish a stronger managerial presence in
20 Illinois so contractors are not policing
21 themselves, does the employment of Mr. Brown affect
22 your conclusions or your testimony in that regard?

1 **A.** It doesn't affect my conclusions about the
2 things with which this complaint deals,
3 specifically the alleged violations from 2007 into
4 early 2008. As a remedial effort and also, I would
5 note, in reaction to recent legislation which
6 required that you create such a position as
7 Mr. Brown. I appreciate the fact that he's there
8 as a remedial effort.

9 **Q.** And in fact your testimony in this case is
10 not solely limited to issues related to 2007 and
11 2008, you go through a lengthy list of measures
12 that you believe are necessary for remediation?

13 **A.** Yes. And I believe I have made it clear
14 that it is ultimately the Company's responsibility
15 to do something so that this private conversation
16 that happens on people's porches don't result in
17 the kinds of complaints, as far as the trends that
18 we keep seeing happening over and over and over
19 again.

20 **Q.** You also say that U.S. Energy should
21 implement a tracking system so management can
22 identify and correct trends reflected in the

1 consumer complaints. Are you familiar with the
2 testimony in this case regarding the complaint
3 tracking system and the complaint tracking efforts
4 that U.S. Energy currently utilizes?

5 **A.** Yes, I think I heard Mr. Potter say
6 yesterday that the Company has instituted a
7 relatively newer complaint tracking system, so that
8 they would be able to track the direct complaints
9 that come in. That was a major concern of mine
10 that was not happening during the complaint period
11 in question.

12 **Q.** How does that testimony affect your
13 recommendations in your testimony regarding the
14 need for a tracking system?

15 **A.** Again, any remediation, anything you do
16 that might reduce these complaints, that might help
17 you to track what's going on in that conversation
18 and keep it on the straight and narrow, when we're
19 talking about that conversation on the porch,
20 that's generating all these complaints, I think is
21 great. It doesn't, however, take away the fact
22 that there are violations going on in '07.

1 Q. That wasn't my question. So I'll move to
2 strike that from the record.

3 JUDGE GILBERT: No, that's overruled.

4 BY MR. CLANCY:

5 Q. You recommended in your direct testimony
6 that U.S. Energy refrain from any measures that
7 would increase cancelation fees beyond \$75 a year.

8 A. Can you take me there?

9 Q. Sure, Lines 233 to 243.

10 A. Okay, I'm there.

11 Q. I'm sorry, I may be talking about your
12 rebuttal.

13 MS. LIN: You're looking at Page 11, you mean?

14 BY MR. CLANCY:

15 Q. It's Page 12 of your direct. Do I
16 understand your testimony correctly that the
17 Company should refrain from finding any further
18 alternative means of increasing the agreed upon \$75
19 a year maximum for its early termination fees?

20 A. Yes.

21 Q. So your position in this testimony was that
22 the termination fee should not go above \$75 per

1 year?

2 **A.** And please don't mistake that to mean that
3 I was thinking that the \$75 per year was a great
4 thing. What I'm saying here is that I could see in
5 contracts at the time that the Company had started
6 selling something called Geo Gas. And although it
7 was my understanding that the company had --

8 **Q.** Let me just stop you right there, I
9 apologize, but could you first answer the question?

10 **MS. NAUGHTON:** He did.

11 **MR. CLANCY:** Then let me see if I can have the
12 question read back.

13 **JUDGE GILBERT:** No, I think that's a fair
14 statement by Mr. Clancy. I obviously allow
15 elaboration, but the question itself ought to be
16 answered initially.

17 **MR. CLANCY:** It was a yes or no question and if
18 he answered yes or no --

19 **MS. NAUGHTON:** I thought he did.

20 **JUDGE GILBERT:** I don't believe so.

21 **MS. NAUGHTON:** Answer the question, then.

22 **JUDGE GILBERT:** I'm not sure he has to say yes or

1 no, but I do think there has to be an answer that
2 is responsive to the question that was asked, in
3 addition to the elaboration.

4 BY MR. CLANCY:

5 Q. My question is, is it your position that
6 the termination fees should not increase above \$75
7 a year?

8 A. I don't think that was an exactly accurate
9 representation of what I said.

10 Q. Are you familiar with Nicor Advanced Energy
11 Plans?

12 A. Nicor Advanced Energy, it's the company,
13 their legal name is Prairie Point, I believe.

14 A. It maybe a doing business as. It's an
15 alternative gas supplier affiliated with Nicor.
16 It's the Nicor Advanced Energy.

17 A. Okay.

18 Q. Are you aware that prior to the enactment
19 of the legislation you referenced earlier, that
20 Nicor Advanced Energy termination fee for its --
21 for one of its alternative gas contracts was a flat
22 fee of \$20 per month for the years -- the months

1 remaining in the contract?

2 **A.** I wasn't aware of that.

3 **Q.** I would like you to take a look at a

4 document called CUB Facts.

5 MR. CLANCY: And we'll mark this as Respondent's

6 Cross Exhibit No. 11.

7 (Whereupon, Respondent's

8 Cross Exhibit No. 11 was

9 marked for identification

10 as of this date.)

11 THE WITNESS: Is it the one that says CUB Facts

12 or the one that says --

13 BY MR. CLANCY:

14 **Q.** Right, CUB Facts.

15 **A.** Okay, got it.

16 **Q.** Have you seen this document before?

17 **A.** No, I have not.

18 **Q.** But you know what Nicor Advanced Energy is,

19 though?

20 **A.** Right.

21 **Q.** It's identified as an unregulated sister

22 company of Nicor Gas?

1 **A.** By unregulated I suppose they mean the
2 rate.

3 **Q.** Well, that's a very good question, I'll get
4 to that in a minute. But that's what they call it.
5 But you're familiar with the company, right?

6 **A.** Right.

7 **Q.** You see at the bottom of this page where it
8 says exit fee, question mark. And it says if you
9 cancel after a 30-day grace period you will be
10 penalized \$20 for each month left in your contract?

11 **A.** I'm sorry, which page.

12 **Q.** The very first page.

13 **A.** Okay, the first one. And then it says at
14 the bottom.

15 **Q.** Right, exit fee.

16 **A.** Mine says, how do I prevent being
17 mistakenly signed up for those plans.

18 **Q.** Oh, no, then you've got the wrong one.

19 **A.** The one that's marked Citizens Utility
20 Board says that on the bottom. I'm looking at CUB
21 Facts.

22 **Q.** Dated March of 2009?

1 **A.** Yeah, the CUB Facts says March of '09 and
2 it says -- I don't know if this will show up, but
3 there is one where the title page look likes that
4 and then there is one where it looks like that. And
5 this one at the bottom says exit fees like you're
6 citing. Do you want me to look at that one?

7 **Q.** I apologize, actually, neither one of them
8 are the right one. I don't think he's got --

9 MS. LIN: Jim, which CUB Facts do you have?

10 THE WITNESS: And it says Nicor's Fixed Bill and
11 Lock 12 plans at the top.

12 MS. LIN: Does it look like this one?

13 THE WITNESS: It doesn't have the box like that,
14 it's just all paragraphs.

15 MR. CLANCY: It is different.

16 MS. NAUGHTON: So they sent the wrong one.

17 MR. CLANCY: That is one of the limitations of
18 technology, I apologize.

19 BY MR. CLANCY:

20 **Q.** It doesn't matter all that much, I'll just
21 read it to you. It says, if you cancel after a
22 30-day grace period you'll be penalized \$20 a month

1 for each month left in your contract, \$20 for each
2 month left. My question is, do you think that \$20
3 a month is a reasonable early termination fee for a
4 fixed term alternative gas supply contract?

5 **A.** How long is the term?

6 **Q.** This particular one is 12 months.

7 **A.** So if they canceled after 1 month they end
8 up paying 11 times 20 to get out of it.

9 **Q.** \$220, right.

10 **A.** \$220. I can tell you that I wouldn't want
11 to pay \$220 to get out of a contract, but, you
12 know, I think the problem here is that I haven't
13 seen a flurry of complaints talking about that. So
14 it's difficult for me to be fully informed about
15 what's going on with customers, what's their
16 reaction to it.

17 **Q.** Right. And not to, you know, shift the
18 focus, but you also don't know if Nicor Advanced
19 Energy has been marketing this plan since 2004, do
20 you?

21 **A.** I don't know. As I said, I wasn't familiar
22 with this to begin with.

1 **Q.** Let me go back to something you said
2 earlier and that was about regulation. Is U.S.
3 Energy an unregulated company?

4 **A.** I don't know that that's -- it seems like a
5 word that gets thrown around and it almost gets to
6 the point that it might not mean that in reality.
7 If you are just talking about the rates, I don't
8 believe that the Commission has ever exerted any
9 rate regulation over U.S. Energy, but there are
10 rate regulations that U.S. Energy would have to
11 comply with.

12 **A.** But U.S. Energy is subject to regulation by
13 the Illinois Commerce Commission, right?

14 **A.** I think that's why we're here, is that you
15 do have to answer complaints provided by us.

16 **Q.** Well, we have to do more than answer
17 complaints, right?

18 **A.** Yeah, I wasn't suggesting that that was the
19 only thing you have to do.

20 **Q.** In fact, U.S. Energy is regulated by the
21 Illinois Commerce Commission, correct?

22 **A.** Not rate regulation, it's kind of a loaded

1 term, it means so many different things.

2 Q. Well, U.S. Energy is a company, it's not a
3 rate, right?

4 A. Right. The way it's always been explained
5 to me is that the Commission regulates services.
6 And the provision of alternative gas supply, the
7 Commission has some regulatory powers over that.

8 Q. Right. They do not regulate the rate of
9 the product that U.S. Energy sells, right?

10 A. That's my understanding.

11 Q. Right. But they do regulate the manner in
12 which U.S. Energy provides its services?

13 A. Right. And a lot of that ties back to the
14 certification, proper management, proper technical
15 and proper financial.

16 Q. And you were taken aback by the
17 characterization of Nicor Advanced Energy as an
18 unregulated sister company of Nicor, weren't you?

19 A. I think taken aback might be a strong
20 characterization. I said I assume they mean rate
21 regulation.

22 Q. Didn't you sort of chuckle and say

1 unregulated, I assume they mean the rate?

2 **A.** I think you said unregulated and I said, I
3 assume they mean the rate.

4 **Q.** Were you surprised to see that they were
5 characterized as unregulated?

6 **A.** I wouldn't say I was surprised.

7 **Q.** But you work for the Illinois Commerce
8 Commission, right?

9 **A.** Indeed I do.

10 **Q.** Do you think that the average consumer --
11 well, let me ask you that, do you have any opinion
12 whether the average consumer knows the difference
13 between an unregulated company and an unregulated
14 rate?

15 **A.** If I was going to hazard a guess, I might
16 say that we would find people in the population all
17 over the place on that.

18 **Q.** Are you aware that U.S. Energy caps its
19 exit fees right now at \$50 as a flat fee?

20 **A.** We're only talking about contracts that
21 were signed after the effective date of statute,
22 right? Or there may have been a period where I

1 think you were doing it before that as well.

2 Q. Right, in fact --

3 A. It's not for everyone who is currently a
4 customer, it's for those who signed up after you
5 started doing that. And I'm sorry, I keep saying
6 you, your client.

7 Q. Right, after January 1st of 2009; is that
8 right?

9 A. I think that's what was said yesterday was
10 that the Company started a little bit ahead of the
11 actual ink being applied to that statute.

12 Q. In 2007, what alternative gas suppliers, to
13 your knowledge, had third-party verification
14 processes for their customer enrollment?

15 A. I'm not aware of what the actual statistics
16 are on that.

17 Q. Are you aware of any?

18 A. I don't know.

19 MS. NAUGHTON: What was your timeframe? I'm
20 sorry.

21 MR. CLANCY: 2007.

22

1 BY MR. CLANCY:

2 Q. Are you aware of alternative gas suppliers
3 in 2007 that had voice recorded verification calls,
4 I mean other than U.S. Energy?

5 A. The distinction between this question and
6 the last is that a voice recorded call could be
7 made by anyone versus a third-party not being the
8 actual alternative gas supplier itself?

9 Q. Right.

10 A. Yeah, actually the answer is the same, off
11 the top of my head, I'm really not aware of what
12 the different alternative gas suppliers were doing
13 in their marketing.

14 Q. I believe you mentioned in your testimony
15 that your position is that verification scripts
16 should include --

17 A. I'm sorry, can you take me there?

18 Q. Sure.

19 A. It's in the direct?

20 Q. It's in the -- I think we're in the
21 rebuttal. It's the rebuttal testimony, Page 6,
22 beginning on Line 118 you say on Line 121, the

1 third-party verification script should include an
2 affirmation that the customer understands that
3 savings are not guaranteed, was that right?

4 **A.** Yes.

5 **Q.** Do you know whether that is in U.S.
6 Energy's current script?

7 **A.** Was that one of the things that was updated
8 just recently? I think I still have that exhibit
9 handy, that might have been the old script.

10 **Q.** That was the script as of April of '08,
11 right.

12 **A.** Let me grab that. Is that in 1.7?

13 **Q.** That was 1.7. I keep saying April of '08
14 but it's February of '08 if you're in Canada.

15 JUDGE GILBERT: I thought the question was about
16 the current agreement.

17 BY MR. CLANCY:

18 **Q.** To keep it clear, why don't we keep it and
19 ask if you are aware what the current verification
20 script is?

21 JUDGE GILBERT: Let me just say, before you begin
22 the answer, I thought Gord Potter testified that

1 the most recent version of the customer agreement
2 that is in the record is 5.9.

3 MR. CLANCY: That's the customer agreement, I'm
4 talking about the verification.

5 THE WITNESS: Is the TPV script the most recent
6 one in the record?

7 BY MR. CLANCY:

8 Q. I'm sorry, could you repeat that?

9 A. Is the TPV script the most recent one in
10 the record?

11 Q. No, this one is from the beginning of 2008,
12 the 1.7.

13 A. Okay.

14 Q. Let me just strike that question and just
15 ask you about 1.7.

16 A. Okay, sure.

17 Q. Because 1.7 asks for the customer to
18 confirm by saying yes and they understand the
19 agreement does not promise savings, right.

20 MS. NAUGHTON: Can you direct him?

21 THE WITNESS: It might be useful if I clarified
22 here, this list of things that I would like to have

1 sort of my wish list for third-party verifications,
2 I think it's important to have the questions asked
3 one at a time and not in any kind of lumped
4 together with any other questions, that is a single
5 question with a single answer. And then the next
6 question with the next answer.

7 So that the customer is presented with,
8 look, you don't know -- you affirm that this is not
9 savings, correct? Pause, give them a chance to say
10 yes. Then the next question, same thing and so on
11 and so forth. So that you're not kind of mashing
12 things together.

13 BY MR. CLANCY:

14 **Q.** So you want discrete questions with an
15 answer after each?

16 **A.** That seems like that might be helpful to
17 you.

18 **Q.** Okay. The second question there is for an
19 affirmation that the customer may save money if the
20 commodity market goes higher and the customer may
21 lose money if the commodity market goes lower.
22 Isn't that the same thing as saying they're not

1 guaranteed savings?

2 **A.** I think those of us in the room that deal
3 with this sort of thing all the time, that
4 distinction comes to us very easily, but I don't
5 know that that does for the average customer.

6 **Q.** With regard to breaking the question down,
7 breaking the questions asked down to require an
8 affirmation after each point, are you aware that
9 the Company implemented that change as part of
10 their settlement with the Attorney General's
11 proceeding?

12 **A.** And it's these questions.

13 **Q.** Well, I'm not saying it's these specific
14 questions, but I'm saying are you aware?

15 **A.** That there is one question, pause, next
16 question pause, kind of concept in there?

17 **Q.** Right, a request for answer after
18 particular questions.

19 **A.** Okay. I've skimmed through the AG
20 settlement a few times, but I don't have it
21 memorized. So I'll take your word for it, subject
22 to check, I suppose.

1 **Q.** That's fine, subject to check.

2 **Q.** And No. 3 here, on Page 6 of your rebuttal
3 testimony says, you want an affirmation that USESC
4 is a for-profit corporation and is not in any way
5 affiliated with a regular utility or any government
6 agency. Are you aware of any other company that is
7 required to affirmatively disclose to its customer
8 and get a third-party voice recorded affirmation
9 that the Company is seeking to make a profit out of
10 its business?

11 **A.** That question is in reaction to allegations
12 received from customers trending towards them
13 saying that the person on the porch told them that
14 they were with the ICC or with CUB or with LIHEAP.

15 **Q.** But is the answer to that question, no, you
16 are not aware of any other companies that are
17 required to do that?

18 **A.** Oh, I'm sorry, you're right, I'm sorry, the
19 direct answer is, no, I'm not aware of other
20 companies that have been required to do that.

21 **Q.** And you don't think it's improper for U.S.
22 Energy to have a business model where it earns a

1 profit, right?

2 A. Absolutely not.

3 Q. And you don't think it's improper for it to
4 have a business model or an exit fee structure --
5 or, I'm sorry, an exit fee structure that seeks to
6 recoupe some of its losses as a result of the
7 cancellation, right?

8 A. I think we could properly find where I, in
9 my own words, said something like that. I don't
10 know if it's in the rebuttal or the direct, but,
11 yeah, I'm not saying that the Company should be
12 absolutely unable to protect itself from losses.

13 Q. If the Company were to have no exit fee,
14 would you agree that it isn't protecting itself
15 from losses due to cancellation?

16 A. I guess it would depend on the reason for
17 the cancellation.

18 Q. Are you aware that the Company conducts
19 background checks and continues to conduct
20 background checks currently?

21 A. Yes.

22 Q. Of --

1 **A.** You are talking about the agents?

2 **Q.** Right, of the independent contractors that
3 it hires.

4 **A.** Yes.

5 **Q.** When you refer to a permanent managerial
6 presence in Illinois to oversee force, on Page 7 of
7 your rebuttal testimony, what do you mean by a
8 permanent local managerial oversight, what would
9 that include?

10 **A.** Wednesday I heard Mr. Hames say that he did
11 not believe that his coordinators could manage more
12 than 10 people at once, and I think he said he
13 himself had trouble with a greater number of crew
14 coordinators than that. Now, whether or not he's
15 actually a manager in the sense that we're looking
16 at is, I think, a point of contention.

17 But, based on that statement, it seems
18 to me like what I'm looking for here is that these
19 agents who are in the field, who right now have
20 nobody shepherding over them directly who is based
21 in Illinois, although I would say that sounds like
22 Mr. Brown's job may be to do that. But it seems to

1 me like he may have some trouble, if Mr. Hames'
2 statements about numbers is correct, with relation
3 to how many agents Mr. Brown now has to watch over.

4 MR. CLANCY: Let's go off the record for just a
5 moment.

6 (Break taken.)

7 MR. CLANCY: That's all the questions I have. I
8 would just like to move for the admission of
9 Respondent's Cross Exhibit 11. That's the CUB
10 Facts.

11 MS. SODERNA: You must have got it off our
12 website, I don't have a problem with it on that
13 end.

14 MS. NAUGHTON: I'm not necessarily objecting, I
15 just wanted to know where it came from.

16 MR. CLANCY: CUB's website.

17 MS. NAUGHTON: It is from their website.

18 MR. CLANCY: From one of their links from their
19 website, it lists their publications.

20 MS. SODERNA: He didn't have any familiarity with
21 the fact sheet or the company, but I'm not going to
22 make an objection about it.

1 MS. NAUGHTON: I'm sorry, I'm just asking one
2 other question. And is this Nicor who puts this
3 together?

4 MS. SODERNA: No, it's CUB Facts.

5 MS. NAUGHTON: That's all I wanted to know.

6 JUDGE GILBERT: Because I as the guardian of the
7 sacred record do have a concern. I'm going to
8 admit the exhibit, but I'm going to limit the use
9 of the exhibit, because it is a two-page exhibit.
10 There is a lot here that was not utilized in cross
11 examination. So listen closely now because here
12 are the parts that will be available.

13 The box toward the top which has the
14 words, Have you been offered a plan from Nicor
15 Advanced Energy, contents of that box and the final
16 section at the bottom right, including the title
17 exit fee. So those are the two matters about which
18 there was cross examination. I have not had an
19 opportunity to even look at the rest of it and so
20 the exhibit is admitted with the proviso that only
21 those two provisions may be used as evidence.

22

1 (Whereupon, Respondent's Cross
2 Exhibit No. 11 was
3 admitted into evidence as
4 of this date.)

5 JUDGE GILBERT: Okay, that's it.

6 EXAMINATION

7 BY

8 JUDGE GILBERT:

9 Q. Jim Agnew, can you hear me?

10 A. Yes.

11 Q. I don't have a lot for you, I just want to
12 direct you to your recommendations in your direct
13 testimony. Let me ask you this, first: In your
14 judgment, had you altered any of your
15 recommendations between your direct and rebuttal
16 testimonies?

17 A. Yeah, I think that that's a fair
18 characterization, because Mr. Potter asked, you
19 know, what does this exactly mean and so I tried to
20 clarify it in rebuttal.

21 Q. Okay.

22 A. I think that his concern was that what I

1 was saying in direct was a little bit vague as far
2 as what exactly was being recommended. And so I
3 tried to clarify it in rebuttal to say that, look,
4 I think the most important thing is for the
5 Commission to say, during the time period that the
6 complaint alleges the problems occurred, the
7 Commission needs to find that a violation occurred.
8 And then after that we can deal with whether or not
9 the Company's efforts up to this point mean that
10 the Commission doesn't have to, at this point --
11 whether or not the Commission, at this point, has
12 to exercise any of the powers that go along after
13 the finding of the violation.

14 Q. Okay. If you take a look at Line 403 in
15 your rebuttal?

16 A. Okay.

17 Q. And read the entire sentence, I guess,
18 would be the best.

19 A. Do you want me to read it out loud?

20 Q. No, I'm just calling your attention to it,
21 and I just want to make sure you're fresh with it.
22 And baring in mind some of the things that you said

1 on direct about the difference between door-to-door
2 sales and other sales modalities, such as
3 telemarketing. And also baring in mind what I
4 think Gord Potter acknowledged, and I think very
5 forthrightly, about some of the differences between
6 door-to-door sales and telemarketing and other
7 sales methods. In your judgment, can door-to-door
8 selling be sufficiently controlled to minimize, to
9 an acceptable degree, the amount of
10 misrepresentation on the part of the energy
11 supplier?

12 **A.** I would not want to take door-to-door sales
13 off the table completely for anyone where there
14 wasn't a repeated pattern of abuse. So I guess the
15 answer to the question would be, I think that
16 although it seems to me like they really need to
17 figure out some way to get into that on the porch
18 conversation, particularly for someone where there
19 has been maybe one or two allegations already for
20 that agent, that I would see that manager as
21 following that person for a day or two.

22 And if you have someone who's selling

1 the heck out of your product and all of a sudden
2 when the manager is present their sales go straight
3 to nowhere, then I think you've caught your
4 problem, perhaps. So I think it might be possible,
5 but it's such a hands on sales technique, that it's
6 my opinion that you need to have more of a hands on
7 managerial aspect in order to try to keep that from
8 happening.

9 Now, and I don't know -- I don't want to
10 get into the realm of rate regulation, but I don't
11 know if different offers might lend themselves less
12 to the problem or if different kinds of payment
13 structures might lend themselves less. There is a
14 whole lot of things that I think sort of feed into
15 the problem that we're seeing. Is that helpful at
16 all?

17 **Q.** Sure. It's exactly what I invited you to
18 do, which is elaborate on your thoughts on the
19 question I asked. And pursuing that line a bit
20 further, I hear you saying that one mechanism for
21 minimizing misleading representations would be to
22 have managerial personnel literally on the porch,

1 as you call it, with the customer. I'm assuming
2 that you are not proposing that in every instance,
3 in every approach to a customer's door, there would
4 be two persons representing the alternative energy
5 supplier, a manager --

6 **A.** Absolutely not. No, I think that that
7 would be triggered by the problems. That that
8 manager would, you know, go to the things where
9 they are getting the allegations. I tried to think
10 very creatively about this and I think at one point
11 in Mr. Potter's rebuttal I was characterized as
12 being something of a technophobe or not
13 understanding technology. And you know, my problem
14 with that is this is a non-technology form of
15 selling, this is face to face.

16 And I tried to think is there any way
17 that there could be recordings made using small
18 devices, where you wouldn't actually have to have a
19 manager present with every one of those people
20 where you had some allegations. I don't know if
21 there is a technological solution that could be
22 paired with the in-the-field management as well.

1 But to me it seems like they need -- they need to
2 be more aware of what's going on on the porches.

3 They can say this is what you have to
4 do, but the truth is, and this is getting into some
5 of that he said/she said stuff, that we just don't
6 know. We can see the trends in the complaints, but
7 they don't know what's happening and neither to do
8 we, exactly.

9 **Q.** How does the third-party verification, in
10 your judgment, work together with what you've
11 already said? Is there a way that the third-party
12 verification can minimize the amount of misleading
13 conduct and the amount of misleading
14 representations to a degree that you would find
15 accurate?

16 **A.** I think it could if it happened in a
17 different time. In other words, if it didn't
18 happen right while the agent was there.

19 **Q.** Okay. Since I've asked you to just think
20 about it, and I'm glad you're doing that, can you
21 think of a way that that might work, how would you
22 make that operational? And if you don't have an

1 opinion, that's fine, too.

2 **A.** Well, I think it would be a little more
3 difficult for the Company to always get ahold of
4 every one of those customers. I think part of the
5 reason why it may be done this way is that it's
6 easy for the agent to get the connection. But the
7 problem is that the agent is still right there.
8 And to me it seems like it should be a call back
9 sometime after the agent is no longer present.

10 **Q.** In the presentation to the customer, do you
11 feel that the key element that is susceptible to
12 misrepresentation is the likelihood of savings, as
13 compared to the customer's current provider?

14 **A.** I think that's the majority -- I tried, in
15 the direct, I tried to categorize things in sort of
16 a descending order, you know, of the volume that we
17 got. The majority of the allegations were that I
18 was promised savings. But I think your question
19 was, what's more likely to happen in door to door
20 and I'm not sure that you couldn't have a different
21 company employing door to door that might say
22 something completely different on the porch. I

1 think it's -- I guess it would be somewhat
2 dependent upon what the offer is, first and then
3 how those agents choose to sell the offer.

4 Q. Okay, let me try the question this way.

5 A. I'm sorry.

6 Q. No, it's probably my fault. You want the
7 customer protected from something or perhaps more
8 than one something. I'm assuming, based on reading
9 your testimony, that the something you feel is most
10 in need of clarity and accuracy in order to protect
11 the customer, is the potential savings attached to
12 the offered transaction. Would that be true? I
13 mean, would you agree with that? Is that your
14 position, I guess I should say?

15 A. I think I would just boil it down to that
16 we don't want misrepresentations of any sort
17 happening on that porch.

18 Q. Okay. Again, given your recommendation on
19 Line 403 of your rebuttal or beginning there and
20 maybe if you've already done this and maybe you, in
21 fact, have already done this, and I just need to
22 hear it again, but if the Commission were to issue

1 a cease and desist order, what concrete actions
2 would have to be implemented in order to have that
3 cease and desist order rescinded?

4 **A.** I think the Commission would need to be
5 persuaded that the Company has a better control
6 over what's happening on that porch. That the
7 agents don't have as much freedom to engage in a
8 pattern of saying things that may not be true to
9 the customer in order to achieve the sale.

10 **Q.** Okay, well, the way that would be
11 communicated to the Commission, then, would not be
12 in the form of a list of concrete action, but in
13 the form of the absence of complaints. And if they
14 can't sell door to door, then they couldn't have an
15 absence of complaints. So I'm assuming that the
16 way they would have to convince the Commission to
17 rescind a cease and desist order would be to
18 implement some set of measures?

19 **A.** Right.

20 **Q.** And so do you have --

21 **A.** Well, you're asking what some of those
22 measures would be in order to impress --

1 **Q.** In your judgment.

2 **A.** I've heard several steps, as far as getting
3 to the remediation phase, as I suggest, if the
4 Commission were to find a violation and then to get
5 to the remediation phase. I've heard several steps
6 throughout the course of the process that the
7 Company has taken for what's going on right now.

8 I haven't heard all the details that I
9 would like to hear, for example, the tracking of
10 those direct complaints so that every agent
11 complaint gets to that CCR group that actually has
12 the ability to say, hey, we got a trend here, this
13 guy is doing wrong, we need to get him off the
14 street. I haven't heard a detailed explanation of
15 that and I suppose that would be one of the things
16 I would want the Commission to look at is how is it
17 that the Company is assuring -- insuring, rather,
18 that those items are escalated to someone in
19 Ms. Findlay's spot so that she's not insulated from
20 what's going on.

21 So it doesn't take a Commission
22 complaint to bring that to her attention, but all

1 those direct calls make it to her and her group.
2 That would be one of the first things that I would
3 be very interested in. I would be extremely
4 interested in the efforts of Mr. Brown. You know,
5 if, as I'm concerned, based on what Mr. Hames said
6 about how hard it was for him to keep track and
7 shepherd over more than 10 agents, I don't want to
8 reveal something that's proprietary in what I'm
9 about to say about the number. Is the number of
10 the total sales agents, can I say that on the
11 record?

12 JUDGE GILBERT: Yeah, that's open.

13 THE WITNESS: I think there is somewhere in the
14 realm of 130. If it's hard for Mr. Hames to watch
15 over 10, I don't know how Mr. Brown's going to
16 watch over 130. I would just be very interested to
17 see what he's doing.

18 BY JUDGE GILBERT:

19 Q. Why would you not, assuming the Commission
20 has this authority, why would you not simply
21 preclude door-to-door selling all together?

22 A. Your Honor, the problem I'm facing here is

1 that sort of as a matter of what I do day in and
2 day out for the last 13 years, we're into the
3 business of resolving problems, trying to resolving
4 things amicably, trying to get to a point where
5 things are fixed instead of having everything fall
6 apart.

7 So I'm, although I think that, you know,
8 if things continue, that the Commission would have
9 to act, I don't think that the Commission should
10 stay its hand forever, but I'm interest in finding
11 a solution. I just think that we don't want to
12 have proceeding, after proceeding, after proceeding
13 to get there.

14 As was brought up in cross yesterday,
15 there has already been one docket with the same
16 exact allegations out there. It was settled
17 without any violations found or anything like that.
18 We're at the table again, we keep seeing this
19 oscillation of complaints in our records. I think
20 we need to find a solution to it but I'm -- I guess
21 I'm a little leery to completely pass judgement on
22 the sales method it self. I think what happened is

1 we've seen a lot of documents, improvements in
2 documents over time but we haven't seen anyone go
3 into the field and try to exercise direct control
4 over these agents. I guess I'm willing to give that
5 a try before we say get rid of it, but that's
6 just -- I'm sorry, that was kind of a long winded
7 answer.

8 JUDGE GILBERT: It's fine that it was a long
9 answer. I asked you to expound and that's what you
10 did and I appreciate that. I'm done, how about
11 redirect?

12 MS. NAUGHTON: Can we have a minute.

13 (Break taken.)

14 JUDGE GILBERT: So, you do have redirect? We
15 are back on the record. Redirect.

16 REDIRECT EXAMINATION

17 BY

18 MS. LIN:

19 Q. Mr. Agnew, if you remember Mr. Clancy had
20 directed you to Page 12 of your direct testimony,
21 where you state, refrain from finding any further
22 alternative means for increasing the agreed upon 75

1 per year maximum for its early termination fees.

2 Do you recall that question?

3 A. Yes.

4 Q. And then Mr. Clancy also brought in the CUB
5 Facts and how Nicor Advanced Energy Services
6 charges \$20 a month for exiting their contract; is
7 that correct?

8 A. Right.

9 Q. Now, bringing you back to your statement
10 about your 75 a year maximum being the maximum, was
11 that the full discussion that you had had regarding
12 the termination fee?

13 A. No, it is not.

14 Q. If I can -- if I can correct Mr. Clancy,
15 isn't it correct that the first part of that
16 statement in your direct testimony says, if my
17 analysis of the Geo Gas cancellation policy is
18 correct, USESC needs to reconsider its early exit
19 fees for the Geo Gas program on any bills submitted
20 through the respective distribution utility and I
21 believe it should refrain from increasing the
22 agreed upon \$75 per year maximum for its early

1 termination fees; is that correct?

2 **A.** Yes.

3 **Q.** And, in fact, you learned this because
4 through your research on Geo Gas, you discovered
5 that U.S. Energy applies extra exit fees for a
6 customer who is being provided the Geo Gas program;
7 is that correct?

8 **A.** That is correct, I found that on the
9 contract.

10 **Q.** And then also Mr. Clancy again talked to
11 you about the Nicor Advanced Energy Services
12 charging \$20 a month for exit fees, they are no
13 longer allowed to do that either, are they?

14 **A.** On a new contrat signed after the
15 legislation that capped exit fees at a maximum of
16 \$50, they would not be allowed to do that.

17 **Q.** Okay, thank you. Mr. Clancy also asked you
18 several series of questions comparing U.S. Energy
19 to other alternative gas suppliers. Do you recall
20 those series of questions?

21 **A.** Yes

22 **Q.** Specifically he had asked you if you knew

1 of any other alternative gas suppliers who required
2 third-party verifications. Do you remember that
3 question?

4 **A.** Right.

5 **Q.** And he also asked you how many other
6 alternative gas suppliers you are aware of that do
7 recorded voice -- voice recordings; is that
8 correct?

9 **A.** Correct.

10 **Q.** And then he also asked you another question
11 regarding whether or not any other alternative gas
12 suppliers are required to disclose their for profit
13 status as a company; is that correct?

14 **A.** Right.

15 **Q.** How many other alternative gas suppliers in
16 the State of Illinois do you know of that sell door
17 to door their product?

18 **A.** To my knowledge, U.S. Energy is the only
19 one that uses door to door as a wide scale and its
20 principal marketing method.

21 **Q.** And would you agree that it's fair to
22 impose different standards on a company that sells

1 their products in a different manner than any other
2 alternative gas supplier in the State of Illinois?

3 **A.** I think it's fair, given the pattern of
4 complaints that we've recognized, to try to find
5 alternative solutions to fix the problems that keep
6 occurring over and over again.

7 **Q.** Mr. Clancy and the judge talked about your
8 recommendations with regard to the complaint
9 tracking database that U.S. Energy now implements,
10 which it didn't implement before. And you had
11 talked a little bit about some of the things that
12 you wanted to see and some of the recommendations
13 you wanted to see and how your recommendations have
14 changed. Can you go into that a little bit more?

15 **A.** The complaint database is something I have
16 heard very little about. It was just mentioned in
17 cross a little bit yesterday as a new concept. And
18 so it's something that I identified as a problem in
19 any direct testimony that in response to data
20 request the Company had said that they do not track
21 those sorts of things. And to me it's very
22 important that if you're going to have the CCR

1 group doing the kinds of things that Ms. Findlay
2 says she was capable of doing in that office, that
3 they're not be any barriers to customers who have
4 the same kinds of problems that we're noting in our
5 complaints, getting to Ms. Findlay's office.

6 And it's far more important on that
7 level for things to be escalated through the direct
8 complaints that U.S. Energy might get than from
9 just the complaints that are received from third
10 parties.

11 **Q.** Mr. Clancy also directed your attention to
12 exhibit 1.7 of Mr. Potter's direct testimony where
13 he asked you to look at one of the third-party
14 verification scripts that was in effect in either
15 April or February of 2008. Do you recall that line
16 of questioning?

17 **A.** Yes.

18 **Q.** Are you personally aware of any third-party
19 verifications who have followed that script
20 directly?

21 **A.** In reviewing the third-party verifications
22 that we have heard, I can't recall if they follow

1 this exactly or not.

2 Q. Do you see problems with the third-party
3 verification script as written in Exhibit 1.7?

4 A. I would prefer to have a third-party
5 verification that asks each simple question
6 stopping as outlined in my rebuttal testimony and I
7 guess I would add a final question which is, is the
8 sales agent or maybe this would be a first
9 question, is the sales agent still present, to try
10 to confirm that the sales agent has left and is no
11 longer there with the customer.

12 Q. And why would you feel that that question
13 is necessary?

14 A. I think that the presence of the agent may
15 cause some undue influence over the customer.

16 Q. And does this just sort of piggyback on the
17 sales presentation that had just taken place on the
18 customer's home or on the customer's porch?

19 A. I think the fact that they are not very
20 commonly separated can cause some problems that we
21 are seeing.

22 Q. In your opinion, would a third-party

1 verification necessarily eliminate any fraud that
2 has taken place during the sales presentation?

3 **A.** On its own it wouldn't eliminate it.

4 **Q.** For instance, let me take you back to
5 Ms. Vargas' third-party verification script. We
6 all recognize that it most likely was a forgery
7 because the person that was impersonating
8 Ms. Vargas was in fact the same person; is that
9 correct?

10 **A.** Right.

11 **Q.** If Mr. Gray had used a woman, let's say his
12 girlfriend or his wife to impersonate Ms. Vargas'
13 voice, would U.S. Energy or I should say, would Ms.
14 Findlay and Ms. Findlay's group the CCR department,
15 would they have necessarily discovered that fraud
16 as quickly as they did had it been a real woman
17 talking on behalf of Ms. Vargas?

18 **A.** I think it would have been much more
19 difficult for them to detect them that quickly.

20 MS. LIN: Judge, I don't think I have any more
21 questions.

22 MR. CLANCY: No questions.

1 THE COURT: Okay, Mr. Agnew, we're done, thank
2 you. We'll need to move everything that we have
3 back into the other room.

4 (Witness excused.)

5 (Break taken.)

6 THE COURT: I spoke to some of you, I think,
7 informally while we were still in the other room,
8 about establishing the rest of our schedule.
9 Obviously I don't want to do that now. I see some
10 folks who are absolutely ready to walk out of this
11 room.

12 MS. SODERNA: Not that I didn't have fun.

13 THE COURT: And I need to walk away from this
14 case for a few days and get caught up on some other
15 things.

16 MS. NAUGHTON: What were you intending, thinking
17 about?

18 JUDGE GILBERT: I mean, one possible way to do
19 this would be to adopt the same intervals that we
20 had already built in way back when, but that's shot
21 as of this moment because I don't want lots of
22 exhibit and --

1 MS. LIN: Judge, do you feel like another post
2 hearing type of situation would be beneficial fo
3 ryou?

4 MS. NAUGHTON: Or I suppose alternatively we
5 could try to work on a schedule to send it by
6 e-mail to you to see if it satisfies you. If we
7 can't do it, we could have a status.

8 MS. LIN: I'm talking about how you talked about
9 actually entering in, because I remember Marty had
10 wanted to enter all of that supplemental evidence
11 that had been sent to us and we all admitted that
12 we haven't had a chance to do that so you
13 recommended not marking this record heard and
14 taken, postponing in the future a hearing date and
15 then briefing schedule after that. So I don't know
16 if you still wanted to go down that route or not.

17 THE COURT: Let's go off the record.

18 (Discussion off the record.)

19 THE COURT: We've concluded the evidentiary
20 portion of the case. At least thus far everything
21 that has been prefiled is in the record or has been
22 denied admission. All the cross exhibits are in or

1 have been denied admission. Not marking the case
2 heard and taken as there is potential of taking in
3 new evidence at a later date.

4 There may or may not be an existing
5 briefing schedule. The parties aren't clear as to
6 whether there is one that could be considered
7 currently effective, I don't recall. In any event,
8 if there is such a schedule, it is not going to be
9 adhered to, I'm making the decision to annul that
10 schedule. It simply would not be practicable. In
11 part because the transcript will not be available
12 for one to two weeks. In part because an enormous
13 record has been created, which may be a bit longer
14 than I had expected, I'm not sure how the parties
15 feel about that. And in part because, at least for
16 myself, I have to turn to some other business here
17 at the Commission and the parties may feel the same
18 with respect to their own schedules.

19 What we will do is by the latter part of
20 next week I'll contact the parties via e-mail so
21 that we can select out next status date, which
22 would probably be in about a week thereafter or

1 perhaps a bit more in order to accommodate your
2 schedules. I would like the parties to consider
3 both a new schedule for briefing and any other
4 activity they think should occur in this docket.
5 And hopefully in addition to that, consider now
6 that an evidentiary record has been created,
7 whether there is -- there now exists a possibility
8 of settling the case to everybody's satisfaction
9 without an order from the Commission.

10 So we're continued generally with the
11 idea that by the end of the next week I'll -- I'll
12 set a new status date for the case. And let me
13 just say that by annulling the existing schedule,
14 if there is in fact an existing schedule, I'm not
15 addressing the intervals that were created in that
16 schedule. I know those were created by the
17 consensus of the parties and those intervals might
18 have been fine, it's just that we can't start that
19 process on that schedule if there is in fact that
20 schedule.

21 Okay. And I'll just say on the record
22 what I said off the record, I thought the parties

1 did an extraordinary job of presenting the case.
2 That goes to all the parties and I thank you for
3 the for the professionalism and the degree of
4 cooperation.

5 (Whereupon the above-entitled
6 matter was continued generally.)

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